A NONSUBSTANTIVE REVISION

OF STATUTES RELATING TO

THE LICENSURE OF INSURERS AND RELATED ENTITIES,

LIFE INSURANCE, AND CERTAIN GROUP BENEFIT PROGRAMS

FOR GOVERNMENTAL EMPLOYEES

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delay, restore the minimum unencumbered surplus if the surplus is impaired. The department shall proceed as provided by Section 5, Article 1.10. (V.T.I.C. Art. 16.06 (part); Art. 16.25.)

Source Law

Art. 16.06. . . .

(b) [The free surplus required herein] in cash. All companies organized after the effective date of this Act under this Chapter . . . [shall at time of incorporation and] at all times thereafter have free surplus equal to $2.00 for each $100.00 of insurance in force, or $200,000.00 whichever amount is greater invested as provided in Article 2.08 of this Code as now provided or as amended in the future. Funds in excess of such minimum surplus may be invested as now provided in Article 2.10 of this Code or as amended in the future. If such free surplus is at any time impaired, it must be restored without delay under the provisions of this Chapter; the State Board of Insurance shall proceed as is provided in Section 5 of Article 1.10 of this Code as it now exists or as amended in the future.

Art. 16.25. All farm mutual insurance companies organized between January 1, 1955, and the effective date of this Act shall always have a free surplus of $2.00 for each $100.00 of insurance in force; or a free surplus of $200,000.00 whichever amount is less.

Revisor's Note

V.T.I.C. Articles 16.06 and 16.25 refer to the "effective date of this Act." That provision was enacted by Chapter 139, Acts of the 63rd Legislature, Regular Session, 1973, which took effect May 21, 1973. The revised law substitutes that date for the quoted language.

CHAPTER 912. COUNTY MUTUAL INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

CHAPTER 912. COUNTY MUTUAL INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 912.001. DEFINITIONS. In this chapter:

(1) "Member" includes a policyholder or another person who is insured by a county mutual insurance company.

(2) "Policy" includes a certificate or contract of insurance, certificate of membership, or other document through which insurance is effected or evidenced. (V.T.I.C. Art. 17.25, Sec. 3 (part).)

Source Law

[Art. 17.25]

Sec. 3. The following terms when used in this article shall be defined:

. . .

"Member" shall include

policyholders or any persons insured by a company, by whatsoever means the insurance may be effective.

"Policy" shall include any insurance certificate or contract or insurance, certificate of membership or other document through which insurance is effected or evidenced.

. . .

Revisor's Note

(1) Section 3, V.T.I.C. Article 17.25, defines "board" to mean the Board of Insurance Commissioners. Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the Board of Insurance Commissioners and the

State Board of Insurance have been changed appropriately. The omitted law reads:

Sec. 3. . . .

"Board" shall refer to the Board of Insurance Commissioners of the State of Texas.

. . .

(2) Section 3, V.T.I.C. Article 17.25, defines "member" to include a policyholder or other insured "by whatsoever means the insurance may be effective." The revised law omits the quoted language as unnecessary because it is clear from the definition of "policy" under that section, revised as Section 912.001(2) of this chapter, that insurance provided by a county mutual insurance company may be effected through a variety of documents.

(3) Section 3, V.T.I.C. Article 17.25, defines "insolvent." The revised law omits the definition as unnecessary because it is duplicative of the substantive provisions of this chapter relating to insolvency. The omitted law reads:

Sec. 3. . . .

"Insolvent" shall refer to and include any condition or situation which is so designated herein and which is violative of the provisions of this article.

. . .

Revised Law

Sec. 912.002. LIMITED EXEMPTION FROM INSURANCE LAWS; APPLICABILITY OF CERTAIN LAWS. (a) A county mutual insurance company is exempt from the operation of all insurance laws of this state, including the flexible rating program under Article 5.101, except laws that are made applicable by their specific terms or except as specifically provided by this chapter.

(b) A county mutual insurance company is subject to:

(1) Sections 38.001 and 822.204; and

(2) Articles 1.15, 1.15A, 1.16, 2.10, 4.10, 5.12, 5.37, 5.38, 5.39, 5.40, 5.49, 21.21, and 21.49. (V.T.I.C. Art. 17.22.)

Source Law

Art. 17.22. (a) County mutual insurance companies shall be exempt from the operation of all insurance laws of this state, except such laws as are made applicable by their specific terms or as in this Chapter specifically provided. In addition to such other Articles as may be made to apply by other Articles of this Code, county mutual insurance companies shall be subject to:

(1) Subdivision 7 of Article 1.10 of this Code; and

(2) Articles 1.15, 1.15A, 1.16, 1.24, 2.04, 2.05, 2.08, 2.10, 4.10, 5.12, 5.37, 5.38, 5.39, 5.40, 5.49, 21.21, and 21.49 of this Code.

(b) The flexible rating program created under Subchapter M, Chapter 5, of this code does not apply to county mutual insurance companies.

Revisor's Note

Section (a), V.T.I.C. Article 17.22, provides that a county mutual insurance company is subject to "Subdivision 7 of Article 1.10" of the Insurance Code, which was codified in 1999 in part as Section 82.002 of this code. The revised law omits that provision as unnecessary because Section 82.002 applies by its own terms to a county mutual insurance company.

Revised Law

Sec. 912.003. FEES. The department shall charge and collect a fee in the amount of $1 for the issuance of a county mutual insurer's certificate of authority. (V.T.I.C. Art. 17.21(a).)

Source Law

Art. 17.21. (a) The department shall charge and collect a fee of One ($1.00) Dollar for the issuance of a certificate of authority or renewal thereof to all companies operating under this chapter.

Revisor's Note

Section (a), V.T.I.C. Article 17.21, authorizes the Texas Department of Insurance to charge and collect a fee for the issuance or renewal of a county mutual insurance company's certificate of authority. Under V.T.I.C. Article 17.02, revised in part as Section 912.004, no new county mutual insurance company may be formed, and thus the department may not issue a certificate of authority to a new company. As a result, the provision has application only to the extent that the department may reissue a certificate of authority to a company whose certificate has been revoked.

The revised law omits the reference to the renewal of a certificate of authority as repealed. Under Section 1, V.T.I.C. Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amending V.T.I.C. Article 1.14, repealed "[a]ll laws and parts of laws in conflict herewith . . . to the extent that they require periodic renewal of certificates of authority."

Revised Law

Sec. 912.004. FORMATION OF NEW COUNTY MUTUAL COMPANY PROHIBITED. A new county mutual insurance company may not be formed under this chapter. (V.T.I.C. Art. 17.02 (part).)

Source Law

Art. 17.02. No county mutual insurance company may be formed under the provisions of this Chapter after the effective date of the Act of which this section is a part, except such as are formed pursuant to permits issued under Article 17.03 of this Code prior to the effective date of this amendment. . . .

Revisor's Note

V.T.I.C. Article 17.02, in part, prohibits the formation of a county mutual insurance company "after the effective date of the Act of which this section is a part, except such as are formed pursuant to permits issued under Article 17.03 of this Code prior to the effective date of this amendment." The referenced amendment took effect September 6, 1955. The revised law omits the quoted language as executed.

Revisor's Note
(End of Subchapter)

(1) V.T.I.C. Article 17.01 in part describes a "county mutual insurance company" and Section 3, V.T.I.C. Article 17.25, defines "company." The revised law omits the description and definition as unnecessary because they are duplicative of the substantive provisions of this chapter. The omitted law reads:

Art. 17.01. County Mutual Insurance Companies are companies organized for the purpose of insurance on the mutual or cooperative plan . . . .

[Art. 17.25]

Sec. 3. . . .

"Company" shall refer to and include all types of organizations, corporations, associations, companies or groups subject to the provisions of this article.

. . .

(2) V.T.I.C. Article 17.25 regulates the operation of companies subject to V.T.I.C. Chapter 17, revised as this chapter. Section 2, V.T.I.C. Article 17.25, states that the article applies to any company operating under Chapter 17, except for a farm mutual insurance company. The revised law omits Section 2 as unnecessary. The provision stating that Article 17.25 applies to a county mutual insurance company is omitted because it is clear from the remainder of that article that it applies to a county mutual insurance company. The provision excepting farm mutual insurance companies is omitted because it duplicates a provision contained in V.T.I.C. Chapter 16, revised as Chapter 911, which exempts farm mutual insurance companies from all other insurance laws except as specifically provided. This exemption would include an exemption from V.T.I.C. Chapter 17. Although the definition of "farm mutual insurance company" that is used in Chapter 16 differs from the

definition used in Article 17.25, it is clear from the legislative history that the currently applicable definition is contained in Chapter 16, and the legislature intended the two provisions to refer to the same companies. The omitted law reads:

Sec. 2. Any company operating under or subject to the provisions of this chapter excepting those companies which out of the total amount of insurance in force maintain more than sixty (60%) per cent in force on rural property and those companies operating on the assessment-as-needed plan, which shall hereafter be known as "Farm Mutual Insurance Companies," shall become subject to the provisions of this article and shall comply with the following requirements, to-wit:

. . .

(3) Section 3, V.T.I.C. Article 17.25, defines "assessment-as-needed plan" and "rural property." The revised law omits the definitions as unnecessary. Article 17.25 uses the terms "assessment-as-needed plan" and "rural property" only in Section 2, V.T.I.C. Article 17.25, which is also omitted from the revision for the reason stated in Revisor's Note (2) to the end of this subchapter. The omitted law reads:

Sec. 3. . . .

"Assessment-as-needed plan" shall refer to companies that other than for nominal reserve purposes assess members only when a loss or losses occur and who use not more than twenty-five (25%) per cent of their gross income for expenses.

. . .

"Rural Property" as the term is used in this article shall mean any property which has at least five (5) acres of cultivated or grazing land used exclusively with such insured property.

. . .

[Sections 912.005-912.050 reserved for expansion]

SUBCHAPTER B. ORGANIZATION OF COUNTY MUTUAL INSURANCE COMPANY; DIRECTORS

Revised Law

Sec. 912.051. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. (a) Except to the extent of any conflict with this code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a county mutual insurance company. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to county mutual insurance companies.

(b) On advance approval of the commissioner, a county mutual insurance company may pay dividends to its members. (V.A.C.S. Art. 1396-10.04, Sec. B (part).)

Source Law

[Art. 1396-10.04]

B. In so far as the same are not inconsistent with or contrary to any applicable provision of the Insurance Code of Texas, or any amendment thereto, the provisions of this Act shall apply to and govern . . . county mutual insurance companies; provided however, (a) that any such mutual insurance . . . companies may, upon advance approval of the Commissioner of Insurance, pay dividends to its members, and (b) that wherever in this Act some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the Secretary of State, such is to be vested in, required of, or performed by the Commissioner of Insurance in so far as such mutual insurance companies . . . are concerned.

Revisor's Note

(1) Section B, V.A.C.S. Article 1396-10.04, states that the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) shall "apply to and govern" county mutual insurance companies. The revised law omits the reference to "govern" because, in context, "govern" is included within the meaning of "apply to."

(2) Section B, V.A.C.S. Article

1396-10.04, refers to the Insurance Code "or any amendment thereto." The revised law omits the reference to "any amendment thereto" because under Section 311.027, Government Code (Code Construction Act), unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

(3) Section B, V.A.C.S. Article 1396-10.04, refers to a "duty, responsibility, power, [or] authority" of the secretary of state and commissioner of insurance. The revised law substitutes "power and duty" for the quoted phrase because "responsibility" is included within the meaning of "duty" and "authority" is included within the meaning of "power."

(4) Section B, V.A.C.S. Article 1396-10.04, refers to an act "vested in, required of, or to be performed by" the secretary of state and commissioner of insurance. The revised law omits the references to "vested in" and "required of" because, in context, these phrases are included within the meaning of the phrase "to be performed by."

Revised Law

Sec. 912.052. ELIGIBILITY OF BOARD OF DIRECTORS; TERM. (a) An individual is eligible to serve as a director of a county mutual insurance company if the individual is a policyholder who maintains insurance coverage in the amount of at least $1,000 written by the company on the individual's property.

(b) Except as otherwise provided by the company's bylaws, a director serves for a term of one year or until the director's successor qualifies for office. (V.T.I.C. Art. 17.12.)

Source Law

Art. 17.12. Directors of county mutual insurance companies shall hold their office for one year after their election, and until their successors qualify, unless otherwise provided in their by-laws.

Only bona fide policyholders who carry insurance on their property in an amount not less than One Thousand ($1,000.00) Dollars each in a company, shall be eligible to become or remain Directors of the same. When a Director reduces his said insurance below such amount, he shall no longer be qualified to act as such Director.

Revised Law

Sec. 912.053. GENERAL POWERS OF BOARD OF DIRECTORS. The board of directors of a county mutual insurance company has the powers provided by the company's charter. (V.T.I.C. Art. 17.13.)

Source Law

Art. 17.13. The Board of Directors of county mutual insurance companies shall have such discretion, power and authority as their charter shall provide.

Revisor's Note

V.T.I.C. Article 17.13 refers to the board of director's "discretion, power and authority." The revised law omits the references to "discretion" and "authority" because the terms are included within the meaning of "power."

Revised Law

Sec. 912.054. AUTHORITY TO BORROW MONEY. (a) The board of directors of a county mutual insurance company may borrow money in an amount determined to be necessary to pay the company's accrued or unaccrued losses.

(b) The board may pledge as security for a loan the assets of the company, including the contingent liability of its policyholders. (V.T.I.C. Art. 17.10.)

Source Law

Art. 17.10. The Board of Directors of county mutual insurance companies may, at any time, borrow such sum or sums of money as they shall deem necessary to pay its losses, accrued or unaccrued, and may pledge the assets of the company including the contingent liability of the policyholders for such losses as security for such loans.

Revised Law

Sec. 912.055. CHARTER AND ARTICLES OF INCORPORATION. The charter and articles of incorporation of a county mutual insurance company must state:

(1) the name of the company, which must include the words "County Mutual Insurance Company";

(2) the location of the principal office of the company; and

(3) the number of the directors, which must be at least five. (V.T.I.C. Art. 17.04 (part).)

Source Law

> Art. 17.04. [The charter and articles of incorporation of a county mutual insurance company shall state] . . . .
>
> It shall also state the name of the company, which shall include the words "County Mutual Insurance Company," the place of its principal office; the number, . . . of its first directors, the number never to be less than five (5); and . . . .

Revised Law

Sec. 912.056. CREATION OF LOCAL CHAPTERS AND DISTRICTS. (a) A county mutual insurance company's bylaws may provide for:

(1) the organization of local chapters to transact the company's business; and

(2) the creation of districts in and for which directors may be elected.

(b) The bylaws may also provide that delegates from the company's local chapters are the company's supreme governing body.

(c) The company may consider the hazards against which the company insures and the company's classes of risks and territory of operation in organizing the local chapters and creating the districts. (V.T.I.C. Art. 17.07.)

Source Law

> Art. 17.07. The by-laws of county mutual insurance companies may provide for the organization of local chapters for the transaction of their business and for the creation of districts in and for which their directors may be elected. The by-laws may also provide that delegates from local chapters constitute the supreme governing body of the company. In the organization of local chapters, and the creation of the districts, the hazards insured against, and the classes of risks, as well as the territory of operation, may be taken into consideration.

Revised Law

Sec. 912.057. POLICYHOLDER MEETINGS. (a) A county mutual insurance company shall hold a policyholder meeting to elect directors and transact business at the time and place and in the manner prescribed by the company's bylaws.

(b) A special meeting of a company's policyholders may be called by:

(1) the president, the general manager, or one-third of the company's directors; or

(2) the commissioner. (V.T.I.C. Art. 17.15.)

Source Law

Art. 17.15. The meetings of the policyholders of county mutual insurance companies shall be held at such time or times, in such place or places, and in such manner for the purpose of electing directors and transacting any business coming before them as prescribed in their by-laws.

Special meetings may be held upon the call of the President, the General Manager, one-third (1/3) of the Directors of the company, or the Board of Insurance Commissioners.

Revised Law

Sec. 912.058. VOTING BY POLICYHOLDERS. (a) Each policyholder of a county mutual insurance company is entitled to only one vote at a policyholders' meeting.

(b) A policyholder may not vote by proxy unless the company's bylaws specifically authorize voting in that manner. (V.T.I.C. Art. 17.14.)

Source Law

Art. 17.14. Each policyholder in a county mutual insurance company shall be entitled to only one vote in all policyholders' meetings.

No voting by proxy shall be permitted unless it is specially authorized by the by-laws.

Revised Law

Sec. 912.059. AMENDMENT TO BYLAWS. (a) A majority of the members of a county mutual insurance company, either in person or by proxy when ratified by the board of directors, may amend the company's bylaws at a regular meeting or at a special meeting called for that purpose.

(b) Notice of a regular or special meeting at which an amendment to the bylaws will be considered must be mailed or delivered personally to each member.

(c) An amendment to the bylaws is not effective until approved by the commissioner as meeting the requirements of this chapter. (V.T.I.C. Art. 17.25, Sec. 13.)

Source Law

Sec. 13. By-laws of any such company may be amended by a majority of the members of the company present or represented by proxy when ratified by the board of directors, but only at meetings called for that purpose, or at regular meetings. Amendments to the by-laws shall not be effective until approved by the Board of Insurance Commissioners as being in conformity with this Act. Notices of all meetings, whether regular or special, at which amendments to by-laws will be considered must be mailed or delivered personally to all members.

Revised Law

Sec. 912.060. AUTHORITY TO PROHIBIT WAIVER OF BYLAWS. A county mutual insurance company may provide in its bylaws that a local chapter or an officer or agent elected by the local chapter may not waive a provision of the bylaws. (V.T.I.C. Art. 17.24.)

Source Law

Art. 17.24. Such companies may provide in their by-laws that local chapters and officers and agents elected by them do not have the power to waive any provision of such by-laws.

Revised Law

Sec. 912.061. APPLICATION FOR EXTENSION OF CHARTER; TERM. (a) Before a county mutual insurance company's charter or extension of the charter expires, the company may apply to the department for an extension of the charter for a term of 50 years from the date the charter would otherwise expire.

(b) The application for an extension must:

(1) demonstrate that the application was authorized either by a two-thirds vote of the company's directors or by a majority vote at a policyholders' meeting;

(2) state in full the charter to be extended;

(3) state the period for which the charter is to be extended;

(4) be signed and acknowledged by the president and secretary of the company; and

(5) be accompanied by a fee of $50.

(c) A company whose charter is extended retains the rights, privileges, and immunities granted a county mutual insurance company by this chapter. (V.T.I.C. Art. 17.19.)

Source Law

Art. 17.19. Any such company at any time before its charter or any extension thereof expires may have such charter extended for a term of fifty (50) years from the date of expiration. It shall continue under the extended charter to have all the rights, privileges and immunities granted by this chapter. The application for such extension shall be made to the Board, shall show that the application was authorized either by a two-thirds (2/3) vote of the directors or by a majority vote at a policyholders' meeting, shall set out in have verbae the charter to be extended, shall state the time for which it is to be extended, shall be signed and acknowledged by the president and secretary of the company, and shall be accompanied by a fee of Fifty ($50.00) Dollars.

Revisor's Note

V.T.I.C. Article 17.19 requires that an application for an extension of a county mutual insurance company's charter "set out in have verbae the charter to be extended." The revised law substitutes "in full" for "in have verbae" because it is clear from the context that the charter must be set out "in full," and that term is more commonly used.

[Sections 912.062-912.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

Revised Law

Sec. 912.101. OPERATION UNDER CERTIFICATE OF AUTHORITY. A county mutual insurance company engages in the business of insurance under a certificate of authority issued by the department. (V.T.I.C. Art. 17.21, Sec. (a) (part).)

Source Law

Art. 17.21. (a) [The department shall charge and collect a fee] . . . for the issuance of a certificate of authority . . . to all companies operating under this chapter.

Revised Law

Sec. 912.102. AUTHORITY TO ENGAGE IN BUSINESS. A county mutual insurance company may engage in business in accordance with this chapter and other applicable laws only if:

(1) the company was formed before September 6, 1955, and was actively engaged in the business of insurance on that date; or

(2) the company was formed under a permit to solicit insurance issued before September 6, 1955. (V.T.I.C. Art. 17.02 (part).)

Source Law

Art. 17.02. . . . County mutual insurance companies formed prior to the effective date of this Act and actively engaged in the insurance business at the time of such effective date or formed pursuant to permit issued prior to the effective date of this amendment under Article 17.03 shall be permitted to engage in business in accordance with the provisions of Chapter 17, as amended, and other applicable laws; . . . .

Revisor's Note

(1) V.T.I.C. Article 17.02 refers to "the effective date of this Act," meaning the effective date of Chapter 117, Acts of the 54th Legislature, Regular Session, 1955. The revised law substitutes September 6, 1955, the effective date of the act, for the quoted language.

(2) V.T.I.C. Article 17.02 refers to V.T.I.C. Chapter 17, as amended. The revised law omits the reference to "as amended" because under Section 311.027, Government Code (Code Construction Act), unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

[Sections 912.103-912.150 reserved for expansion]

SUBCHAPTER D. POLICIES AND COVERAGE

Revised Law

Sec. 912.151. KINDS OF INSURANCE AUTHORIZED. (a) A county mutual insurance company that qualifies to write casualty lines for statewide operation may write all lines of automobile insurance. The company may not assume a risk on any one hazard that is greater than five percent of its assets, unless the company promptly reinsures the excess amount of risk.

(b) A county mutual insurance company may insure property against loss or damage by:

(1) fire, lightning, gas explosion, theft, windstorm, and hail or for any combination of these hazards; or

(2) any other hazard against which any other fire or windstorm insurance company operating in this state may write insurance on property described by Subsection (c).

(c) Unless restricted by its charter, the company may write insurance against the hazards described by Subsection (b) on:

(1) a rural or urban dwelling and attendant outhouses and yard buildings;

(2) the contents, for home and personal use, of a rural or urban dwelling, an attendant outhouse, or a yard building, including a family vehicle, musical instrument, and library;

(3) a barn or other farm, dairy, truck garden, hennery, or ranch building and any other improvement;

(4) a vehicle, harness, implement, tool, or machinery of any description used on and about a farm, truck garden, dairy, hennery, or ranch;

(5) fruit and products, other than growing crops, and any fowl, livestock, or domestic animals that are produced, raised, grown, kept, or used on a farm, truck garden, dairy, hennery, or ranch;

(6) a church house, country school house, country lodge room, or country recreation hall, other than a road house or public dance hall; and

(7) the contents of a church house, country school house, country lodge room, or country recreation hall. (V.T.I.C. Art. 17.01 (part); Art. 17.25, Sec. 1.)

Source Law

Art. 17.01. [County Mutual Insurance Companies are companies organized for the purpose of insurance] . . . against loss or damage by fire, lightning, gas explosion, theft, windstorm and hail, and for all or either of such purposes.

Unless they are restricted by their charters, they may write insurance against said hazards:

(a) On both rural and urban dwellings and attendant outhouses and yard buildings and all their contents for home and personal use--including family vehicles, musical instruments and libraries;

(b) On barns and other farm, dairy, truck garden, hennery and ranch buildings and improvements of every description;

(c) On all vehicles, harness, implements, tools and machinery of every kind and description used on and about farms, truck gardens, dairies, henneries or ranches;

(d) On all fruits and products, other than growing crops, and all fowls, domestic animals and livestock of every description, produced, raised, grown, kept or used on truck gardens, henneries, farms, ranches and dairies; and

(e) On church houses, country school houses, country lodge rooms and country recreation halls, other than road houses and public dance halls and their contents.

Art. 17.25

Sec. 1. County mutual insurance companies operating under the provisions of this Chapter shall be authorized to write insurance against loss or damage from any hazard provided therein or that any other fire or windstorm insurance company operating in Texas may write on property described in Article 17.01 of this Chapter. County mutual insurance companies qualifying to write casualty lines for state wide operation may write all lines of automobile insurance, provided that no such company shall assume a risk on any one hazard greater than five (5%) per cent of its assets, unless such excess shall be promptly reinsured.

Revised Law

Sec. 912.152. POLICY FORMS. (a) A county mutual insurance company is subject to Articles 5.06 and 5.35.

(b) The commissioner, in accordance with Article 5.35, may adopt for use by county mutual insurance companies uniform policy forms that differ from the forms adopted for use by other companies and shall prescribe the conditions under which a county mutual insurance company:

(1) may use the policy forms adopted under this subsection; or

(2) shall use the policy forms adopted for other companies. (V.T.I.C. Art. 17.25, Sec. 5.)

Source Law

Sec. 5. Each county mutual insurance company shall be subject to the provisions of Article 5.06 and Article 5.35 of this Code. The Board of Insurance Commissioners pursuant to Article 5.35 may in its discretion make, promulgate and establish uniform policies for county mutual insurance companies different from the uniform policies made, promulgated and established for use by companies other than county mutual insurance companies, and shall prescribe the conditions under which such policies may be adopted and used by county mutual insurance companies, and the conditions under which such companies shall adopt and use the same forms and no others as are prescribed for other companies.

Revisor's Note

Section 5, V.T.I.C. Article 17.25, authorizes the commissioner of insurance to "make, promulgate and establish" policies. The revised law substitutes "adopt" for the quoted language to provide for consistent use of terminology within this code.

Revised Law

Sec. 912.153. CONTRACT TERMS: INCORPORATION OF BYLAWS. (a) A county mutual insurance company's bylaws are part of each contract between the company and an insured.

(b) Each policy issued by the company must state that the company's bylaws are part of the contract. (V.T.I.C. Art. 17.23.)

Source Law

Art. 17.23. By-laws of the company shall always constitute a part of the contract with the insured and the policy shall so state.

Revised Law

Sec. 912.154. AMOUNT OF INSURANCE UNDER MULTIPLE HAZARDS POLICY. The amount of risk or insurance coverage in a policy that insures a risk against more than one hazard is the maximum loss the county mutual insurance company may sustain under the policy at any one time, regardless of the number of hazards against which the company insures. (V.T.I.C. Art. 17.25, Sec. 20 (part).)

Source Law

Sec. 20. . . . Where any risk is insured against more than one hazard, for the purposes of this Chapter and of this Article, the amount of risk or insurance in any policy shall be the maximum loss that may be sustained at any one time by the company under the policy, regardless of the number of hazards insured against.

Revised Law

Sec. 912.155. REPAIR OR REPLACEMENT OF INSURED PROPERTY. (a) The county mutual insurance company's bylaws may authorize the company to require, at its option, that all or a percentage of the money paid for a loss be used to replace or repair the damaged or destroyed property. The requirement may apply equally to personal and real property, including personal and real property exempt from execution, such as a homestead or a building on the homestead. The company may provide in its bylaws that the requirements of Section 862.053 do not apply to its insurance policies.

(b) This section does not apply to a company that meets the requirements of Section 912.308(a)(3), but such a company is subject to Sections 883.154, 883.155, and 883.156. (V.T.I.C. Art. 17.06 (part).)

Source Law

Art. 17.06. . . .

The by-laws may also provide that when a loss occurs, the companies may, at their option, provide and require that all or a certain per cent of the money to be paid for the loss be put back into a replacement or repair of the property damaged or destroyed; provided such provision may be equally made applicable to real and personal property and property exempt from execution such as homesteads or buildings on the homestead and exempt personal property. County mutual companies may in their by-laws provide that the requirements of Article 6.13 of this Code shall not be applicable to their contracts of insurance.

Provided, however, that a county mutual insurance company which meets the requirements of Article 17.11, subsection (c) shall not be subject to the provisions of the next two (2) preceding paragraphs, but shall be subject to the provisions of Article 15.11 of this Code.

Revisor's Note

V.T.I.C. Article 17.06 states that a county mutual insurance company's bylaws may provide that certain requirements do not apply to the company's "contracts of insurance." The revised law substitutes "policies" for "contracts" for consistency of terms in this chapter.

Revised Law

Sec. 912.156. CONTESTING CLAIM FOR CERTAIN PURPOSES PROHIBITED. (a) In this section, "full payment" means payment of the full amount of a loss actually sustained on the occurrence of the contingency against which the insurance coverage is obtained, not to exceed the maximum amount stated in the policy.

(b) A county mutual insurance company may not contest a claim:

(1) only for delay or a captious or inconsequential reason; or

(2) to force a settlement for less than full payment. (V.T.I.C. Art. 17.25, Secs. 3 (part), 12 (part).)

Source Law

Sec. 3. The following terms when used in this article shall be defined:

. . .

"Paid in full" or "full payment" shall mean the payment of the full amount of loss actually sustained not to exceed the maximum stated in the policy on the happening of the contingency insured against.

Sec. 12. . . . claims may not be contested for delay only or for captious or inconsequential reasons, or to force settlement at less than full payment. . . .

Revisor's Note

(1) Section 3, V.T.I.C. Article 17.25, defines "paid in full" and "full payment." The revised law omits the reference to "paid in full" as unnecessary because the term is not used in the source law for this chapter or in the revision.

(2) Section 12, V.T.I.C. Article 17.25,

provides that "[i]t shall not be unlawful for a [county mutual insurance] company to contest claims for valid reasons," but a company may not contest a claim for delay or for certain other reasons. The revised law omits the quoted language as unnecessary because prohibiting a county mutual insurance company from contesting a claim for certain reasons does not imply that the company may not otherwise contest a claim for a valid reason. The omitted law reads:

Sec. 12. It shall not be unlawful for a company to contest claims for valid reasons; but . . . .

Revised Law

Sec. 912.157. DENIAL OF CLAIM: NOTICE REQUIRED. (a) A county mutual insurance company shall notify a claimant of the company's intent to deny liability on a claim not later than the 60th day after the date the company receives due proofs that the claim will not be paid.

(b) A company that does not notify a claimant as required by Subsection (a) is presumed as a matter of law to have accepted liability on the claim. (V.T.I.C. Art. 17.25, Sec. 12 (part).)

Source Law

Sec. 12. . . . Therefore, if liability is to be denied on any claim, the company is hereby required to notify the claimant within sixty (60) days after due proofs are received that the claim will not be paid, and failing to do so, it will be presumed as a matter of law that liability has been accepted.

. . .

[Sections 912.158-912.200 reserved for expansion]

SUBCHAPTER E. CHARGES, PREMIUMS, AND ASSESSMENTS

Revised Law

Sec. 912.201. SCHEDULE OF CHARGES. A county mutual insurance company shall file with the department a schedule of the amounts the company charges a policyholder or an applicant for a policy, regardless of the term the company uses to refer to those charges, including "rate," "policy fee," "inspection fee," "membership fee," or "initial charge." (V.T.I.C. Art. 17.25, Sec. 6.)

Source Law

Sec. 6. Such companies shall file with the Board a schedule of its rates, the amount of policy fee, inspection fee, membership fee, or initial charge by whatever name called, to be charged its policyholders or those applying for policies.

Revised Law

Sec. 912.202. PAYMENT OF PREMIUM OR ASSESSMENT. (a) A county mutual insurance company's bylaws must:

(1) state the time and manner of the levy and payment of a premium or assessment for policies written by the company;

(2) in addition to the regular premium or assessment under Subdivision (1), establish the contingent liability of a policyholder for all losses accrued while a policy is in force in the amount of $2 for each $100 of insurance coverage; and

(3) state the time and manner of payment of a policyholder's contingent liability established under Subdivision (2).

(b) As required by its bylaws, a county mutual insurance company shall establish and levy premiums and assessments, including the contingent liability of a policyholder, for all insurance written by the company.

(c) A policyholder shall pay premiums and assessments as required by the company's bylaws.

(d) The premium or assessment for a policy shall be secured by a lien on each item of real or personal property, other than a homestead, covered by the policy, including the land on which an insured building is located. The lien remains on the property while the insured owns the property.

(e) Subsection (a) does not apply to a company that meets the requirements of Section 912.308(a)(3), but such a company is subject to Sections 883.154, 883.155, and 883.156. (V.T.I.C. Art. 17.06 (part); Art. 17.08 (part); Art. 17.25, Sec. 20 (part).)

Source Law

Art. 17.06. The by-laws shall state the time and manner of the levy and payment of all premiums or assessments for all insurance written by the company.

They shall also fix the liability of the policyholders for all losses accrued while the policies are in force, in addition to the regular premium or assessments for the same; and the time and manner of the payment of such liability; provided that the amount of such liability shall be $2.00 for each $100.00 of insurance in such policy.

. . .

Provided, however, that a county mutual insurance company which meets the requirements of Article 17.11, subsection (c) shall not be subject to the provisions of the next two (2) preceding paragraphs, but shall be subject to the provisions of Article 15.11 of this Code.

Art. 17.08. All premiums and assessments, including the contingent liability of policyholders for all insurance written by county mutual insurance companies shall be fixed, levied and paid as and when required by the by-laws of the companies and the whole premium or assessment for a policy shall be secured by a lien on each item of real or personal property other than homesteads covered by such policy including the land on which the insured buildings are situated, as long as the same remains the property of the insured.

. . .

[Art. 17.25]

Sec. 20. The contingent liability of policyholders required under Article 17.06 of this Chapter shall be fixed in the by-laws of each company and shall be $2.00 for each $100.00 of property insured in any policy issued by companies subject to the provisions of this Article. . . .

Revised Law

Sec. 912.203. NONPAYMENT OF PREMIUM OR ASSESSMENT: FILING OF ACTION. (a) A county mutual insurance company may bring an action in the home county of the company against a policyholder who defaults on the payment of an assessment or premium.

(b) The company is entitled to judgment against the policyholder for:

(1) delinquent premiums or assessments;

(2) foreclosure of the lien described by Section 912.202; and

(3) the costs of an action, including a reasonable attorney's fee in the amount of at least $5. (V.T.I.C.

Art. 17.08 (part).)

Source Law

Art. 17.08. . . . If default is made by a policyholder in the payment of an assessment or premium, suit may be brought against him for the same in any court of competent jurisdiction in the home county of the company and the company shall be entitled to have judgment against him for such delinquent premiums or assessments, and for a foreclosure of said lien, together with all costs of suit including a reasonable attorney's fee in a sum of not less than Five ($5.00) Dollars.

Revisor's Note

V.T.I.C. Article 17.08 provides that a county mutual insurance company may file suit "in any court of competent jurisdiction." The revised law omits the quoted language as unnecessary because a suit may only be brought in a court, and the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 912.204. POLICYHOLDER LIABILITY. A policyholder is liable for the losses of a county mutual insurance company only as provided by Section 912.202 and the company's bylaws, and only in proportion to the amount that the premium or assessment for the policyholder's policy bears to the total amount of premiums or assessments for all policies written by the company in the class to which the policyholder's policy belongs. (V.T.I.C. Art. 17.09.)

Source Law

Art. 17.09. Policyholders shall be liable for losses of the company only as prescribed in the by-laws of the company and Article 17.06 of this Code, and that only in proportion that the premium or assessments for the insurance of any policy bears to the total amount of premiums or assessments for all the insurance in the class to which the policy belongs.

[Sections 912.205-912.250 reserved for expansion]

SUBCHAPTER F. AGENTS

Revised Law

Sec. 912.251. LICENSING AND APPOINTMENT OF AGENTS. An agent or solicitor for a county mutual insurance company must be licensed and appointed as provided by Article 21.07 or 21.14. (V.T.I.C. Art. 17.25, Sec. 9.)

Source Law

Sec. 9. Agents or solicitors for such companies shall be licensed and appointed as provided in Article 21.07 or 21.14 of this Code.

Revised Law

Sec. 912.252. OVERCHARGING OR MISREPRESENTATION BY AGENT: REVOCATION OF LICENSE. (a) The department shall revoke the license of an agent or solicitor of a county mutual insurance company convicted of an offense under Section 912.253.

(b) The department may not issue another license to an agent or solicitor whose license is revoked under this section. (V.T.I.C. Art. 17.25, Sec. 15 (part).)

Source Law

Sec. 15. Should any agent or solicitor for any company be found guilty of [making a charge greater than that filed with the Board, or guilty of misrepresentation,] he shall have his license cancelled and shall not thereafter be again licensed by said Board. . . .

Revisor's Note

Section 15, V.T.I.C. Article 17.25, requires the department to "cancel" the license of an agent or solicitor "found guilty" of committing certain acts. The revised law substitutes "revoke" for "cancel" and "convicted" for "found guilty" because, in context, the terms are synonymous, and "revoke" and "convicted" are more commonly used.

Revised Law

Sec. 912.253. OVERCHARGING OR MISREPRESENTATION BY AGENT; CRIMINAL PENALTY. (a) An agent or solicitor of a county mutual insurance company commits an offense if the person:

(1) charges an amount for a policy that is greater

than the amount in the schedule of charges filed with the department; or

(2) commits misrepresentation.

(b) An offense under this section is punishable by a fine of not less than $50 or more than $500. (V.T.I.C. Art. 17.25, Sec. 15 (part).)

Source Law

Sec. 15. Should any agent or solicitor for any company be found guilty of making a charge greater than that filed with the Board, or guilty of misrepresentation, [he shall have his license cancelled] . . . . Any agent or solicitor who, upon conviction, is found guilty of overcharge or misrepresentation, shall be punished by a fine of not less than Fifty ($50.00) Dollars nor more than Five Hundred ($500.00) Dollars.

[Sections 912.254-912.300 reserved for expansion]

SUBCHAPTER G. REGULATION OF COUNTY MUTUAL INSURANCE COMPANY; FINANCIAL REQUIREMENTS

Revised Law

Sec. 912.301. REPORT REGARDING CONDITION OF COMPANY. (a) The commissioner may, at any time the commissioner determines advisable, compel written reports from a county mutual insurance company regarding the company's condition.

(b) The commissioner may require that the report be verified under oath by a responsible officer of the company. (V.T.I.C. Art. 17.25, Sec. 18 (part).)

Source Law

Sec. 18. The Board of Insurance Commissioners shall have the power and authority to compel written reports from such association as to the condition of such company whenever deemed advisable by the Board. The Board may require that such report be verified by the oath of a responsible officer of the company. . . .

Revised Law

Sec. 912.302. ANNUAL STATEMENT FEE. The department shall charge and the comptroller shall collect a fee of $20 for the filing of an annual statement by a county mutual insurance company. (V.T.I.C. Art. 17.21, Sec. (b).)

Source Law

(b) The department shall charge a filing fee of Twenty ($20.00) Dollars for filing each annual statement. The comptroller shall collect the filing fee.

Revised Law

Sec. 912.303. BOOKS AND RECORDS. (a) A county mutual insurance company shall maintain the company's books and records in a form and manner that accurately reflects the condition of the company or the facts essential to the company's faithful and effective operation.

(b) The company shall use forms or systems that most effectively serve the purposes of this section. (V.T.I.C. Art. 17.25, Sec. 8.)

Source Law

Sec. 8. All the records and books of each company shall be kept in the shape, form and manner as to reflect truly and accurately the condition of the company, or the facts essential to its faithful and effective operation. The company shall at once adopt forms or systems which will serve the purpose most effectively.

Revisor's Note

(1) Section 8, V.T.I.C. Article 17.25, refers to the "shape, form and manner" of a county mutual insurance company's books and records. The revised law omits the reference to "shape" because "shape" is included within the meaning of "form and manner."

(2) Section 8, V.T.I.C. Article 17.25, refers to "truly and accurately" reflecting the condition of the company. The revised law omits the reference to "truly" because "truly" is included within the meaning of "accurately."

Revised Law

Sec. 912.304. REINSURANCE. (a) A county mutual insurance company may reinsure any or all of the company's risks with another company against any hazard against which the county mutual insurance company is permitted to insure.

(b) The county mutual insurance company may contract for mutual or reciprocal reinsurance with another company on the mutual or cooperative plan subject to the following conditions:

(1) the county mutual insurance company may assume the reinsurance on the risks of the other company only if the other company reinsures the risks of the county mutual insurance company; and

(2) the county mutual insurance company may write or assume the reinsurance only on property that the company is authorized to insure and that is located in this state.

(c) A county mutual insurance company that reinsures another company's property is liable for the losses of the other company only as specified in the reinsurance contract. The county mutual insurance company does not become a member or partner of the other company as a result of the reinsurance.

(d) A county mutual insurance company may pay or collect additional assessments or premiums for the purpose of a contract described by Subsection (b). (V.T.I.C. Art. 17.20.)

<u>Source Law</u>

Art. 17.20. County mutual insurance companies may reinsure any or all of their risks against any or all hazards which they are permitted to insure against with any other company or companies.

They shall have power and authority to make and enter into mutual or reciprocal reinsurance contracts with other companies on the mutual or cooperative plan; provided that no county mutual insurance company shall write or assume the reinsurance on any other property than the property it is permitted to insure, or on property situated outside of the State of Texas; and when such a county mutual insurance company reinsures the property of another company, it shall not by reason of such fact be, or become a member or partner, of such other company, but shall only become liable for the losses of such other company as specified in the contract of interinsurance and not otherwise; and provided further, that a county mutual insurance company shall only have authority to reinsure the risks of another company in consideration of the fact that such other company reinsures its risks; and for that purpose it may pay or collect additional assessments and/or premiums as the case may be.

Revisor's Note

V.T.I.C. Article 17.20 refers to mutual or reciprocal "reinsurance" and to a contract of "interinsurance." The revised law substitutes "reinsurance" for "interinsurance" because, in this context, the terms are synonymous and "reinsurance" is the term more commonly used.

Revised Law

Sec. 912.305. SECURITY DEPOSIT. (a) A county mutual insurance company shall maintain with the comptroller through the department a deposit in cash or, subject to the commissioner's approval, convertible securities. The deposit must be equal to:

(1) the largest amount assumed by the company on any one risk; or

(2) on a demonstration of reinsurance acceptable to the commissioner, the largest amount retained by the company on any one risk after reinsurance.

(b) The deposit is liable for the payment of all judgments against the company and is subject to garnishment after final judgment against the company. The company, on the commissioner's demand, must immediately replenish the deposit when the deposit is impounded or depleted. If the company does not immediately replenish the deposit, the company may be regarded as insolvent.

(c) If a county mutual insurance company makes a statement, including a statement contained in an advertisement, letter, or literature, that the company deposited cash or securities as required by this section, the company must also state in full:

(1) the purpose, exact amount, and character of the deposit; and

(2) the conditions under which the deposit was made. (V.T.I.C. Art. 17.25, Sec. 4.)

Source Law

Sec. 4. Each such company shall place with the comptroller through the Board of Insurance Commissioners a deposit equal to the largest amount assumed on any one risk, or upon a showing or re-insurance acceptable to the Board, the largest amount retained on any one risk after re-insurance, which deposit may be in cash or in convertible securities subject to approval of the Board. Such deposit shall be liable for the payment of all judgments against the company, and subject to a garnishment after final judgment against the company. When such deposit becomes impounded or depleted it shall at once be replenished immediately on demand by the Board, or the company may be regarded as insolvent.

When any company shall desire to state in advertisements, letters, literature or otherwise, that it has made a deposit with the Board as required by law, it must also state in full the purpose of the deposit, the conditions under which it is made, and the exact amount and character thereof.

Revisor's Note

Section 4, V.T.I.C. Article 17.25, refers to "a showing or re-insurance" of a county mutual insurance company's risks. The revised law substitutes "of" for "or" to correct an apparent typographical error.

Revised Law

Sec. 912.306. REQUIRED BONDS. (a) A county mutual insurance company shall obtain a bond for:

(1) the officer responsible for handling the funds of the company's members; and

(2) all other office employees who may have access to the company's funds.

(b) The bonds required under this section must:

(1) be with a surety authorized by the department to engage in business in this state;

(2) be made payable to the department for the use and benefit of the company's members; and

(3) obligate the principal and surety to pay pecuniary losses that the company sustains through an act of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or wilful misapplication, regardless of whether the act is committed by the officer or employee directly and alone, or in cooperation with another person.

(c) A bond under this section must:

(1) be in an amount that is at least the greater of $1,000 or the amount of cash assets on hand, but not more than $20,000, if the bond covers the officer; or

(2) be in an amount established by the department that is at least $1,000 but not more than $5,000, if the bond covers office employees.

(d) One or more persons may recover on a bond under this section until the bond is exhausted. (V.T.I.C. Art. 17.25, Sec. 11.)

Source Law

Sec. 11. Such companies shall furnish a

bond for the officer responsible for the handling of funds of the members in some surety licensed by the Board to do business in Texas in the minimum amount of One Thousand ($1,000.00) Dollars, said bond to be kept at all times at least equal to the cash assets on hand, with a maximum of Twenty Thousand ($20,000.00) Dollars, said bond shall be made payable to the Board of Insurance Commissioners for the use and benefit of the members of the company, and shall obligate the principal and surety to pay such pecuniary loss as the company shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such officer, either directly and alone, or in connivance with others.

In addition to the bond required in the preceding paragraph each company shall procure a like bond for all other office employees, who may have access to any of its funds, in an amount or amounts fixed by the Board with a minimum of One Thousand ($1,000.00) Dollars and a maximum of Five Thousand ($5,000.00) Dollars. Successive recoveries on any of the bonds provided for in this section may be had on such bonds until same are exhausted.

Revisor's Note

Section 11, V.T.I.C. Article 17.25, refers to a "licensed" surety, meaning a surety who holds a certificate of authority and is thus authorized to engage in business in this state. The revised law substitutes "authorized" for "licensed" for consistent use of terminology within this code.

Revised Law

Sec. 912.307. RESERVE REQUIREMENTS. (a) A county mutual insurance company shall maintain unearned premium reserves as provided by Section 862.102.

(b) The company shall invest the unearned premium reserves and any other type of reserves authorized by the company's board of directors in the same type of securities in which the reserve funds of insurance companies engaged in the same kind of business are required to be invested by law. (V.T.I.C. Art. 17.11 (part).)

Source Law

Art. 17.11. County mutual insurance companies shall maintain at all times unearned premium reserves as provided in Article 6.01 of this Code. The unearned premium reserves and any other type of reserves authorized by the Board of Directors shall be invested in such securities as the reserve funds of other insurance companies doing the same kind of business are by law required to be invested.

. . .

Revised Law

Sec. 912.308. AMOUNT AND INVESTMENT OF SURPLUS. (a) A county mutual insurance company shall maintain an unencumbered surplus which may be invested only in items listed in Section 822.204. The unencumbered surplus must be at least:

(1) $25,000, if the company is organized to write insurance coverage locally in only the county of its domicile;

(2) $50,000, if the company is organized to write insurance coverage in only the county of its domicile and any adjacent county; or

(3) an amount equal to the aggregate of the minimum capital and minimum surplus required under Sections 822.054, 822.202, 822.210, and 822.211, for a fire insurance company if the county mutual insurance company is organized to write insurance coverage statewide.

(b) A county mutual insurance company is subject to Sections 822.203, 822.205, 822.210, and 822.212 and Section 5, Article 1.10. (V.T.I.C. Arts. 17.11 (part), 17.16.)

Source Law

Art. 17.11. . . .

There shall be maintained at all times free surplus invested only in items enumerated in Article 2.08 of this Code of:

(a) Not less than $25,000.00 if the company is organized to write insurance locally in the county of its domicile only; or

(b) Not less than $50,000.00 if the company is organized to write insurance in the county of its domicile and any adjoining counties only; or

(c) Not less than an amount equal to the aggregate of the minimum capital and minimum surplus required of a fire insurance company by Article 2.02 of this Code if such company is organized to write insurance in a county other than the county of its domicile and any adjoining counties within this State.

Each county mutual insurance company shall be subject to the provisions of Section 5 of Article 1.10 and Article 2.20 of this Code.

Art. 17.16. A county mutual insurance company possessed of $25,000.00 or more in surplus as provided in Article 17.11 may write insurance locally in the county of its domicile; and such company possessed of $50,000.00 or more in surplus as provided in Article 17.11 may write insurance in the county of its domicile and any adjoining counties; and such company possessed of surplus equal to the aggregate of the minimum capital and minimum surplus required of a fire insurance company by Article 2.02 of this Code may write insurance anywhere within this State.

Revisor's Note

V.T.I.C. Article 17.11 requires that a county mutual insurance company maintain "free" surplus. The revised law substitutes "unencumbered" for "free" for consistent use of terminology within this code.

Revised Law

Sec. 912.309. POLICYHOLDER LOANS TO COMPANY. (a) A policyholder may loan to a county mutual insurance company money as necessary:

(1) for the company to engage in the company's business; or

(2) to enable the company to comply with a requirement of this chapter, including the unencumbered surplus requirement under Section 912.308.

(b) Subject to the approval of the commissioner, the county mutual insurance company may repay a loan and agreed interest, at an annual rate not to exceed 10 percent, only from the surplus remaining after the company provides for the company's reserves, other liabilities, and required surplus.

(c) A loan under this section or interest on a loan is not otherwise a liability or claim against the company or any of its assets.

(d) A county mutual insurance company may not pay a commission, promotion expense, or other bonus in connection with a loan made to the company.

(e) A county mutual insurance company shall report in its annual statement the amount of each loan made to the company. (V.T.I.C. Art. 17.17.)

Source Law

Art. 17.17. One or more of the policyholders of the company may advance to the company such funds as are necessary for the purposes of its business or to enable it to comply with any requirement of this Chapter, including the surplus requirement of Article 17.11, and such moneys and interest thereon as may have been agreed upon, not exceeding ten (10%) per cent per annum, shall be payable, subject to the approval of the Board of Insurance Commissioners, only out of the surplus remaining, after providing for all reserves, other liabilities and required surplus, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expense, or other bonus, shall be paid in connection with the advance of any such money to the company, and the amount of all such advances shall be reported in each annual statement.

Revisor's Note

V.T.I.C. Article 17.17 refers to the advancement of "funds" to a company. The revised law substitutes "money" for "funds" because, in context, the terms are synonymous and the former is more commonly used.

Revised Law

Sec. 912.310. CERTAIN COMPANIES EXEMPT. (a) Chapter 196, Acts of the 53rd Legislature, Regular Session, 1953, and Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, do not apply to a county mutual insurance company:

(1) that was organized and operating as a county mutual fire insurance company on May 22, 1953; and

(2) the business of which is devoted exclusively to the writing of industrial fire insurance policies covering dwellings, household goods and wearing apparel on a weekly, monthly, or quarterly basis on a continuous premium payment plan.

(b) The exemption established by this section applies only so long as the company is engaged exclusively in the writing of industrial fire insurance policies described by Subsection (a). (V.T.I.C. Art. 17.02 (part).)

Source Law

Art. 17.02. . . . provided, however, that neither the provisions of this Act nor the provisions of Senate Bill No. 107, Acts of 53rd Regular Session, Texas Legislature, 1953, effective May 22, 1953, shall apply to any county mutual insurance company organized and operating as a county mutual fire insurance company on May 22, 1953, whose business is devoted exclusively to the writing of industrial fire insurance policies covering dwellings, household goods and wearing apparel on a weekly, monthly or quarterly basis on a continuous premium payment plan. Provided further, that this exemption shall apply only so long as said companies are engaged exclusively in the writing of such industrial fire insurance policies. . . .

Revisor's Note

V.T.I.C. Article 17.02 refers to "this Act," meaning Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, and to "Senate Bill No. 107, Acts of 53rd Regular Session, Texas Legislature, 1953," meaning Chapter 196 as enacted by that legislature. The revised law is drafted accordingly.

[Sections 912.311-912.700 reserved for expansion]

SUBCHAPTER O. GENERAL FINANCIAL REGULATION

Revised Law

Sec. 912.701. HAZARDOUS FINANCIAL CONDITION, SUPERVISION, CONSERVATORSHIP, AND LIQUIDATION. Articles 1.32, 21.28, and 21.28-A apply to a county mutual insurance company engaged in the business of insurance in this state. (New.)

Revisor's Note

Section 14, V.T.I.C. Article 17.25, established procedures for conservatorship of a county mutual insurance company that is insolvent or that is in a condition that renders the continuance of its business hazardous to the public. Section 14 was derived from V.A.C.S. Article 4860a-20 and has not been substantively amended since

1947. After the enactment of Article 4860a-20, the legislature established comprehensive procedures applicable to those companies. Together with V.T.I.C. Article 21.28, the later enacted provisions, which are contained in V.T.I.C. Article 1.32, originally enacted in 1975, and V.T.I.C. Article 21.28-A, originally enacted in 1967, completely subsume and replace the procedures established under Section 14. As a result, the revised law omits Section 14 as impliedly repealed and adds a reference to Articles 1.32, 21.28, and 21.28-A for the convenience of the reader. The omitted law reads:

Sec. 14. If, upon an examination or at any other time, and after proper notice and hearing, it appears to the Board of Insurance Commissioners that such company be insolvent, or its condition be, in the opinion of the Board, such as to render the continuance of its business hazardous to the public, or to holders of its certificates, or if such company appears to have exceeded its powers or failed to comply with the law, then the Board shall notify the company of its determination and said company shall have thirty (30) days under the supervision of the Board within which to comply with the requirements of the Board; and in the event of its failure to so comply within such time, the Board, acting for itself or through a conservator appointed by the Life Insurance Commissioner for that purpose, shall immediately take charge of such company, and all of the property and effects thereof. If the Board is satisfied that such company can best serve its policyholders and the public through its continued operation by the conservator under the direction of said Board, pending the election of new directors and officers by the membership in such manner as the Board may determine, the same shall be done. If the Board, however, is satisfied that such company is not in condition to satisfactorily continue business in the interest of its policyholders under the conservator as above provided, the Board shall proceed to reinsure the outstanding liabilities in some solvent company, authorized to transact business in this State, or the Board shall proceed through such conservator, to liquidate such company, or the Board may give notice to the Attorney General as provided under the General Laws relating to insurance corporations. It shall be in the discretion of the Board to determine whether or not it will operate the company through a conservator, as provided above, or proceed to liquidate the company, as herein provided, or report it to the Attorney General. When the liabilities of a company are reinsured or liquidated, as herein provided, the Board shall report the same to the Attorney General who shall take such action as may be necessary to effect the forfeiture or cancellation of the charter of the company so reinsured or liquidated. Where the Board lends its approval to the merger transfer or consolidation of the membership of one company with that of another, the same shall be reported to the Attorney General who shall proceed to effect the forfeiture or cancellation of the charter of the company from which the membership was merged, transferred or consolidated, in the same manner as is provided for the charters of companies reinsured or liquidated. No merger or transfer shall be approved unless the company assuming the members transferred or merged is operating under the supervision of the Board of Insurance Commissioners. The cost incident to the conservator's services shall be fixed and determined by the Board and shall be a charge against the assets and funds of the company to be allowed and paid as the Board may determine.

[Sections 912.702-912.750 reserved for expansion]

SUBCHAPTER P. DISCIPLINARY ACTION AND PROCEDURES IN GENERAL

Revised Law

Sec. 912.751. OFFICER OR DIRECTOR UNWORTHY OF TRUST: REMOVAL AND REVOCATION OF CERTIFICATE OF AUTHORITY. (a) After notice and hearing, the commissioner shall order the removal of an officer or director of a county mutual insurance company holding a certificate of authority if the officer or director is found unworthy of the trust or confidence of the public.

(b) If a county mutual insurance company does not remove an officer or director as required by an order issued under Subsection (a), the commissioner shall:

(1) revoke the company's certificate of authority; and

(2) treat the company as insolvent. (V.T.I.C. Art. 17.25, Sec. 10 (part).)

Source Law

Sec. 10. [The Board of Insurance Commissioners shall not issue to any company a certificate of authority . . . when it shall find . . . any officer or member of the board of directors to be unworthy of the trust or confidence of the public.] After a certificate has been granted, the Board shall order, after notice and hearing, the removal of any officer or director found unworthy of trust, and if such officer or director be not then removed, the Board shall cancel the certificate and proceed to deal with the company as though it were insolvent.

Revisor's Note

Section 10, V.T.I.C. Article 17.25, states that the commissioner "shall cancel" a certificate of authority in certain circumstances. The revised law substitutes "revoke" for "cancel" because, in context, the terms are synonymous and "revoke" is more frequently used. Similar changes are made throughout this chapter.

Revised Law

Sec. 912.752. FRAUDULENT OPERATION OR IMPROPER CONTESTS: REVOCATION OF CERTIFICATE OF AUTHORITY. After notice and hearing, the commissioner shall revoke the certificate of authority of a county mutual insurance company that is:

(1) operating fraudulently; or

(2) improperly contesting the company's claims. (V.T.I.C. Art. 17.25, Sec. 12 (part).)

Source Law

Sec. 12. . . . The Board, after notice and hearing, shall cancel the certificate of authority of any company found to be operating fraudulently or improperly contesting its claims.

Revised Law

Sec. 912.753. TIME LIMIT TO APPEAL. An individual or a county mutual insurance company may appeal an order or a ruling of the commissioner under this chapter not later than the 60th day after the date of the order or ruling, in accordance with Subchapter D, Chapter 36. (V.T.I.C. Art. 17.25, Sec. 21 (part).)

Source Law

Sec. 21. It shall be the right and privilege of any individual or any such company to appeal within sixty (60) days from any order or ruling . . . . The action shall be tried and determined as provided by Article 1.04 of this code.

Revisor's Note

Section 21, V.T.I.C. Article 17.25, governs the appeal of an order or ruling of the commissioner issued under that article. The revised law omits part of that provision, relating to venue, as duplicative of V.T.I.C. Article 1.04, codified as Subchapter D, Chapter 36, of this code. The omitted law reads:

Sec. 21. [It shall be the right and privilege of any individual or any such company to appeal within sixty (60) days from any order or ruling] to the District Court in the County of Travis, Texas. . . .

[Sections 912.754-912.800 reserved for expansion]

SUBCHAPTER Q. GENERAL CRIMINAL PENALTIES

Revised Law

Sec. 912.801. VIOLATION OF CHAPTER; CRIMINAL PENALTY. (a) Except as otherwise provided by this subchapter, a person, including a director, officer, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company, commits an offense if the person violates this chapter.

(b) An offense under this section is punishable by:

(1) a fine of not more than $500;

(2) confinement in jail for a term of not more than 180 days; or

(3) both a fine and confinement as provided by Subdivisions (1) and (2). (V.T.I.C. Art. 17.25, Sec. 19.)

Source Law

Sec. 19. If any director, officer,

agent, employee or attorney at law or attorney in fact of any company under this article, or any other person, shall violate any of the provisions of this article not specifically set out in Sections 16, 17, and 18 of this article, he shall be punished by fine not to exceed Five Hundred ($500.00) Dollars, or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment.

Revised Law

Sec. 912.802. CONVERSION; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company commits an offense if the person fraudulently takes or converts to the person's own use or secretes with the intent to take or convert to the person's own use, and with knowledge that the person is not entitled to receive it, any property or other thing of value of the company that is in the person's custody, control, or possession as a result of the person's office, directorship, agency, or employment or in any other manner.

(b) A director, officer, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company commits an offense if the person pays or delivers property or another thing of value described by Subsection (a) to another person knowing that the person is not entitled to receive it.

(c) An offense under this section is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for a term of not more than 10 years or less than 2 years. (V.T.I.C. Art. 17.25, Sec. 16.)

Source Law

Sec. 16. If any director, officer, agent, employee, attorney at law or attorney in fact, of any association under this article shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such company, knowing that he is not entitled to receive it, that may have come into his custody, control, possession or management by virtue of his office, directorship, agency, or employment, or in any other manner, or shall secrete the same with intent to take, misapply or convert the same to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

Revisor's Note

(1) Section 16, V.T.I.C. Article 17.25, refers to certain persons who fraudulently "take, misapply or convert" property. The revised law omits the references to "misapply" because the term is included within the meaning of "convert."

(2) Section 16, V.T.I.C. Article 17.25, refers to "money, property or other thing of value" of a county mutual insurance company. The revised law omits the reference to "money" because the term is included within the meaning of "property."

(3) Section 16, V.T.I.C. Article 17.25, refers to property in the "custody, control, possession or management" of a person. The revised law omits the reference to "management" because "management" is included within the meaning of "control."

Revised Law

Sec. 912.803. UNLAWFUL DIVERSION OF FUNDS; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company commits an offense if the person wilfully borrows, withholds, or diverts from its purpose in any manner all or part of a special fund that:

(1) belongs to or is under the control and management of the company; and

(2) is designated by law for that purpose.

(b) An offense under this section is punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for a term of not more than 10 years or less than 2 years. (V.T.I.C. Art. 17.25, Sec. 17.)

Source Law

Sec. 17. If any director, officer, agent, employee, attorney at law, or attorney in fact of any company under this article, shall wilfully borrow, withhold or in any manner divert from its purpose, any special fund or any part thereof, belonging to or under the control and management of any company under this article, which has been set apart by law, he shall be confined in the penitentiary not less than two (2) nor more than ten (10) years.

Revised Law

Sec. 912.804. FALSE AFFIDAVIT; CRIMINAL PENALTY. (a) An officer, director, agent, employee, attorney at law, or attorney in fact of a county mutual insurance company commits an offense if the person wilfully makes a false affidavit in connection with the requirements of this chapter.

(b) An offense under this section is punishable by:

(1) a fine of not more than $500; or

(2) confinement in jail or imprisonment in the institutional division of the Texas Department of Criminal Justice for a term of not more than two years. (V.T.I.C Art. 17.25, Sec. 18 (part).)

Source Law

Sec. 18. . . . If any officer, director, agent, employee, attorney at law or attorney in fact, of any company under this article, shall wilfully make any false affidavit in connection with the requirements of this article, he shall be punished by a fine not to exceed Five Hundred ($500.00) Dollars, or by imprisonment in the county jail not to exceed two (2) years, or by confinement in the penitentiary not to exceed two (2) years.

Revisor's Note
(End of Chapter)

(1) V.T.I.C. Article 17.02, in part, repeals Section 22, V.T.I.C. Article 17.25. The revised law omits the repeal as executed. The omitted law reads:

Art. 17.02. . . . Section 22 of Article 17.25 is hereby repealed.

(2) V.T.I.C. Articles 17.03, 17.04, and 17.05 specify the procedures and requirements for incorporation as a county mutual insurance company. However, V.T.I.C. Article 17.02 provides that no county mutual insurance company may be formed under V.T.I.C. Chapter 17, revised as this chapter, after September 5, 1955, unless it is formed under a permit issued under V.T.I.C. Article 17.03 before that date. V.T.I.C. Article 17.03 was amended in 1955 to repeal the application process for a permit and, as amended, provided that a permit previously issued under that article expired by its terms and was not renewable. Consequently, no new county mutual insurance companies may be formed under V.T.I.C. Chapter 17, and the revised law omits Articles 17.03, 17.04, and 17.05 as executed. The omitted law reads:

Art. 17.03. Permits issued prior to the effective date of this amendment pursuant to the provisions of Article 17.03 shall expire by their present terms and shall not be renewed. Moneys collected from applicants other than charter members shall be held in trust for them until incorporation and returned in the event the organization is not perfected.

Art. 17.04. The charter and articles of incorporation of a county mutual insurance company shall state the names and post office addresses and be signed by not less than twenty-five (25) of its charter members, and be acknowledged before a notary public by not less than five (5) of them.

It shall also state . . . [the number,] names and post office addresses of its first directors, . . . and such other provisions as the incorporators may desire to set out therein.

Art. 17.05. Before a charter shall be granted a county mutual insurance company, the incorporators must have on hand:

(a) Not less than twenty-five (25) applications in writing for insurance on not less than one hundred (100) separate risks; provided that no one risk shall be for more than one (1%) per cent of the total amount of insurance applied for in the new company, and that a separate risk shall be one or more items of real or personal property which is not exposed to any other property on which insurance is applied for in the new company;

(b) Not less than One ($1.00) Dollar for each One Hundred ($100.00) Dollars of insurance applied for at the time of incorporation, in cash or securities in which the reserve funds may be invested;

(c) Not less than Ten Thousand ($10,000.00) Dollars in free surplus which shall be in cash or securities in which its reserve funds may be invested, if the company is organized to write insurance locally in the county of its domicile and any adjoining counties; if such company is organized to write insurance in any county within this State, its surplus requirement as provided herein shall be Twenty-Five Thousand ($25,000.00) Dollars in cash or securities in which its reserve funds may be invested; and

(d) Said application for charter shall also be accompanied by a copy of the by-laws of the company, and the bond of the secretary or manager of the same in such sum and conditioned as the Board may determine.

When the foregoing requirements have been complied with to the satisfaction of the Board of Insurance Commissioners, the Board, upon the payment of a fee of Fifty ($50.00) Dollars, shall issue such company a charter to do business as an incorporated company.

(3) Section 10, V.T.I.C. Article 17.25, prohibits the Texas Department of Insurance from issuing a certificate of authority

to a county mutual insurance company under certain conditions. The revised law omits the provision for the reason stated in Revisor's Note (2) above. In addition, to the extent that the department may reissue a certificate of authority to a company whose certificate has been revoked, the provision duplicates Section 3, V.T.I.C. Article 1.14, revised as Subchapter C, Chapter 801, of this code. The omitted law reads:

Sec. 10. The Board of Insurance Commissioners shall not issue to any company a certificate of authority to do business in Texas, when it shall find after notice and hearing any officer or member of the board of directors to be unworthy of the trust or confidence of the public. . . .

[Chapters 913-940 reserved for expansion]

SUBTITLE G. LLOYD'S PLAN AND RECIPROCAL AND INTERINSURANCE EXCHANGES

CHAPTER 941. LLOYD'S PLAN

SUBCHAPTER A. GENERAL PROVISIONS

CHAPTER 941. LLOYD'S PLAN

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 941.001. DEFINITIONS. In this chapter:

(1) "Affiliate" has the meaning described by Section 823.003.

(2) "Attorney in fact" means an attorney in fact authorized under a power of attorney to act for the underwriters of a Lloyd's plan.

(3) "Lloyd's plan" means an entity engaged in the business of writing insurance on the Lloyd's plan.

(4) "Underwriter" means an individual, partnership, or association of individuals that writes insurance on the Lloyd's plan. (V.T.I.C. Arts. 18.01 (part), 18.01-1 (part), 18.02 (part), 18.23A, Sec. (b); New.)

Source Law

Art. 18.01. [Individuals, partnerships or associations of individuals,] hereby designated "underwriters," [are authorized to make any insurance, . . . on the Lloyd's plan, . . .].

Art. 18.01-1. [Individuals, partnerships or associations of individuals,] hereby designated "underwriters" [are authorized to make any insurance, except life insurance, on the Lloyds plan,] . . . . [Policies of insurance may be executed by] an attorney in fact or other representatives, hereby designated "attorney," authorized by and acting for such underwriters under powers of attorney.

Art. 18.02. [Policies of insurance may be executed by] an attorney or by attorneys in fact or other representative, hereby designated "attorney," authorized by and acting for such underwriters under power of attorney. . . .

[Art. 18.23A]

(b) For purposes of this Article, "affiliate" has the meaning assigned by Section 2, Article 21.49-1, of this code.

Revisor's Note

(1) V.T.I.C. Articles 18.01 and 18.01-1 provide that "[i]ndividuals, partnerships or associations of individuals, hereby designated underwriters" may write insurance on the Lloyd's plan. The definition of "underwriter" is added to the revised law to incorporate that concept and to eliminate the frequent, unnecessary repetition of the substance of the definition.

(2) V.T.I.C. Articles 18.01-1 and 18.02 refer to an attorney in fact "or other representative" acting under a power of attorney. The revised law omits the reference to "other representative" as unnecessary because any "representative" acting under a power of attorney is an attorney in fact.

(3) V.T.I.C. Articles 18.01-1 and 18.02 use the term "attorney" to refer to an attorney in fact. For clarity and consistency, the revised law defines the term "attorney in fact" and substitutes that term for "attorney" throughout this chapter as appropriate. The definition of attorney in fact is added to the revised law to eliminate the frequent, unnecessary repetition of the substance of the definition.

(4) The definition of "Lloyd's plan" is added for drafting convenience and to allow distinctions to be made throughout the chapter between underwriters and the entity created by underwriters under this chapter.

Revised Law

Sec. 941.002. LLOYD'S PLAN INSURANCE AUTHORIZED; LIFE INSURANCE PROHIBITED. (a) Except as provided by Subsection (b), a Lloyd's plan may write any kind of insurance that may be lawfully written in this state, including:

(1) fire insurance, including tornado, hail, crop,

and floater insurance;

(2) automobile insurance, including fire, theft, transportation, property damage, collision liability, and tornado insurance;

(3) liability insurance;

(4) marine insurance;

(5) accident and health insurance;

(6) burglary insurance;

(7) plate glass insurance; and

(8) fidelity and surety bonds insurance.

(b) A Lloyd's plan may not write life insurance. (V.T.I.C. Arts. 18.01 (part), 18.01-1 (part), 18.03 (part).)

Source Law

Art. 18.01. Individuals, partnerships or associations of individuals, . . . are authorized to make any insurance, except life insurance, on the Lloyd's plan, ...

Art. 18.01-1. Individuals, partnerships or associations of individuals, . . . are authorized to make any insurance, except life insurance, on the Lloyds plan, ...

Art. 18.03. . . .

(c) [The kinds of insurance to be effected,] which kinds of insurance may be as follows:

1. Fire insurance, which term shall be construed to include tornado, hail, crop and floater insurance.

2. Automobile insurance, which term shall be construed to include fire, theft, transportation, property damage, collision liability and tornado insurance.

3. Liability insurance.

4. Marine insurance.

5. Accident and health insurance.

6. Burglary and plate glass insurance.

7. Fidelity and surety bonds insurance.

8. Any other kinds of insurance not above specified, the making of which is not otherwise unlawful in this State, except life insurance.

. . .

Revised Law

Sec. 941.003. LIMITED EXEMPTION FROM INSURANCE LAWS; APPLICATION OF CERTAIN LAWS. (a) A Lloyd's plan is exempt from the operation of all insurance laws of this state except as specifically provided in this chapter or unless it is specifically provided in the other law that the law is applicable.

(b) A Lloyd's plan is subject to:

(1) Section 5, Article 1.10;

(2) Article 1.15A;

(3) Subchapter A, Chapter 5;

(4) Articles 5.35, 5.38, 5.39, 5.40, and 5.49;

(5) Articles 21.21 and 21.49-8; and

(6) Sections 822.203, 822.205, 822.210, and 822.212.

(c) Subchapter M, Chapter 5, applies to rates for motor vehicle insurance written by a Lloyd's plan.

(d) Underwriters and their attorney in fact are subject to Sections 822.051, 822.057, 822.058, 822.059, 822.060, and 822.201, except that:

(1) the articles of agreement executed by the underwriters are instead of the articles of incorporation; and

(2) the aggregate of the guaranty fund and unencumbered surplus of the Lloyd's plan constitutes capital structure for purposes of Section 822.060. (V.T.I.C. Arts. 5.01-2 (part), 18.04 (part), 18.05 (part), 18.23.)

Source Law

Art. 5.01-2. (a) Lloyd's plan insurers and . . . are subject to this subchapter.

(b) On and after March 1, 1992, rates for motor vehicle insurance written by a Lloyd's plan insurer . . . are determined as provided by the flexible rating program adopted under Subchapter M of this chapter.

Art. 18.04. Such underwriters and their attorney shall be subject to the provisions of Article 2.01 and Article 2.04 of this Code, except that:

1. The Articles of Agreement shall be in lieu of Articles of Incorporation; and

2. The aggregate of guaranty fund and free surplus shall constitute capital structure within the meaning of Article 2.01.

. . .

Art. 18.05. No attorney shall be licensed for the Underwriters at a Lloyd's until and unless the provisions of Article 2.01 are fully complied with and . . . .

Art. 18.23. (a) Underwriters at a Lloyds' shall be exempt from the operation of all insurance laws of this State except as in this Chapter specifically provided, or unless it is specifically so provided in such other law that same shall be applicable.

(b) In addition to such Articles as may be made to apply by other Articles of this Chapter, underwriters at a Lloyds' shall not be exempt from and shall be subject to Articles 1.15A, 2.20, 5.35, 5.38, 5.39, 5.40, 5.49, 21.21, and 21.49-8 of this Code.

Revised Law

Sec. 941.004. WITHDRAWAL FROM THE BUSINESS OF INSURANCE. (a) A Lloyd's plan may withdraw from the business of insurance only if the department determines that adequate provision has been made, through reinsurance or other means, for:

(1) payment of all unadjusted losses of the Lloyd's plan; and

(2) reinsurance of all outstanding risks in favor of residents of this state or covering property located in this state.

(b) On compliance with the requirements of Subsection (a):

(1) any bond of the attorney in fact shall be released; and

(2) the department shall release to the underwriters any net assets over which the department has joint control. (V.T.I.C. Art. 18.18 (part).)

Source Law

Art. 18.18. . . .

In case underwriters at a Lloyd's shall desire to withdraw from the insurance business, they may be permitted to do so, if and when they shall satisfy the Board that adequate provision has been made, through reinsurance or otherwise, for the payment of all unadjusted losses, and for the reinsurance of all outstanding risks in favor of citizens of Texas, or covering property in Texas, and thereupon any bond of the attorney in fact shall be released, and said Board shall release to such underwriters the net assets over which it may have been given joint control.

Revisor's Note

(1) V.T.I.C. Article 18.18 refers to the "Board," meaning the Board of Insurance Commissioners. Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the "Board of Insurance Commissioners" and the "State Board of Insurance" have been changed appropriately.

(2) V.T.I.C. Article 18.18 refers to "citizens" of this state. The revised law substitutes "resident" for "citizen" because, in context, the two terms are synonymous and "resident"

is more commonly used. Similar changes have been made throughout this chapter.

[Sections 941.005-941.050 reserved for expansion]

SUBCHAPTER B. FORMATION AND STRUCTURE OF LLOYD'S PLAN

Revised Law

Sec. 941.051. FORMATION OF LLOYD'S PLAN. (a) To write insurance on the Lloyd's plan, underwriters must:

(1) execute articles of agreement expressing the intent to write insurance; and

(2) comply with the requirements of this chapter.

(b) A Lloyd's plan must have at least 10 underwriters. (V.T.I.C. Arts. 18.01 (part), 18.01-1 (part), 18.03 (part).)

Source Law

Art. 18.01. [Individuals, partnerships or associations of individuals, hereby designated "underwriters," are authorized to make any insurance, except life insurance, on the Lloyd's plan,] by executing articles of agreement expressing their purpose so to do and complying with the requirements set forth in this chapter.

Art. 18.01-1. [Individuals, partnerships or associations of individuals, hereby designated "underwriters" are authorized to make any insurance, except life insurance, on the Lloyds plan,] by executing articles of agreement expressing their purpose so to do, and complying with the requirements set forth in the law authorizing such insurance. . . .

Art. 18.03. . . .

(f) [The names and addresses of all underwriters,] whose number shall not be less than ten.

. . .

Revisor's Note

V.T.I.C. Article 18.01-1, which was formerly a part of the Penal Code of Texas, 1925, refers to "the law authorizing such insurance," meaning the law authorizing insurance written on the Lloyd's plan. Section 5, Chapter 399, Acts of the 63rd Legislature, Regular Session, 1973, transferred Article 18.01-1 without amendment to Chapter 18, Insurance Code, revised as this chapter. This chapter is the law authorizing insurance written on the Lloyd's plan, and the revised law is drafted accordingly.

Revised Law

Sec. 941.052. ATTORNEY IN FACT. (a) The attorney in fact may execute insurance policies for the Lloyd's plan.

(b) The principal office of the attorney in fact must be maintained at the place designated by the underwriters in the articles of agreement. (V.T.I.C. Arts. 18.01-1 (part), 18.02 (part).)

Source Law

Art. 18.01-1. . . . Policies of insurance may be executed by an attorney in fact . . . [authorized by and acting for such underwriters under powers of attorney].

Art. 18.02. Policies of insurance may be executed by an attorney or by attorneys in fact . . . [authorized by and acting for such underwriters under power of attorney]. The principal office of such attorneys shall be maintained at such place as may be designated by the underwriters in their articles of agreement; . . . .

Revised Law

Sec. 941.053. DEPUTY OR SUBSTITUTE ATTORNEY IN FACT. An appointed deputy attorney in fact or substitute attorney in fact for an attorney in fact holding a certificate of authority under this chapter and accepting powers of attorney from underwriters is authorized by the certificate of authority to:

(1) issue or make a policy or contract of insurance; and

(2) perform any other act incident to issuing or making a policy or contract of insurance. (V.T.I.C. Art. 18.14 (part).)

Source Law

Art. 18.14. . . . the acts of the duly appointed deputy or substitute attorney of any attorney licensed under this chapter accepting powers of attorney from underwriters and in making and issuing policies and contracts of insurance and in doing any additional acts incident thereto shall be deemed authorized by the license issued to the original attorney.

Revisor's Note

V.T.I.C. Article 18.14 refers to a "license" issued to the original attorney in fact. The revised law substitutes "certificate of authority" for "license" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business. Also, under V.T.I.C. Article 18.04, revised in pertinent part as Section 941.103, it is a certificate of authority that is issued to the attorney in fact for a Lloyd's plan. Similar changes have been made throughout this chapter.

Revised Law

Sec. 941.054. NAME OF LLOYD'S PLAN. The name under which a Lloyd's plan engages in business:

(1) must contain the word "Lloyd's"; and

(2) may not be so similar to any name in use in this state as to be likely to confuse or deceive. (V.T.I.C. Art. 18.03

(part).)

Source Law

Art. 18.03. . . .

(a) [The . . . title under which the business is to be conducted,] which title shall contain the name Lloyd's and shall not be so similar to any name or title in use in this State as to be likely to confuse or deceive.

. . .

[Sections 941.055-941.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 941.101. CERTIFICATE OF AUTHORITY REQUIRED. (a) An attorney in fact may not write insurance in this state or for residents of this state or covering property located in this state unless the attorney in fact holds a certificate of authority issued under this chapter.

(b) Except as otherwise provided by this chapter, an attorney in fact must:

(1) be a resident of this state; and

(2) maintain the attorney in fact's office in this state. (V.T.I.C. Art. 18.02 (part).)

Source Law

Art. 18.02. . . . provided that no license shall be issued to any attorney at Lloyd's to bind risks or insurance in Texas, or with citizens of Texas or covering property in Texas, unless their attorneys in fact be residents of this State and maintain their office in this State, except as may be hereinafter specifically provided.

Revised Law

Sec. 941.102. APPLICATION FOR CERTIFICATE OF AUTHORITY. (a) The attorney in fact shall file with the department a verified application for a certificate of authority that states:

(1) the name of the attorney in fact;

(2) the name under which the Lloyd's plan will engage in the business of insurance;

(3) the names and addresses of the underwriters;

(4) the location of the principal office; and

(5) the kinds of insurance to be written.

(b) The application must be accompanied by:

(1) a copy of each form of policy or contract under which insurance will be written;

(2) a copy of the form of the power of attorney under which the attorney in fact will act for and bind the

underwriters;

(3) a copy of the articles of agreement executed by the underwriters and the attorney in fact;

(4) a financial statement showing in detail:

(A) assets held by the attorneys in fact, committee of underwriters, trustees, or other officers of the Lloyd's plan;

(B) liabilities incurred and outstanding; and

(C) income received and disbursements made by the attorney in fact;

(5) an instrument executed by each underwriter authorizing the attorney in fact to accept service of process for each underwriter in any action on a policy or contract of insurance; and

(6) an instrument from the attorney in fact that delegates to the department the power of the attorney in fact to accept service of process.

(c) On filing the application, the attorney in fact shall pay to the department a fee of $10. A fee collected under this subsection shall be deposited to the credit of the Texas Department of Insurance operating account.

(d) Article 1.31A applies to a fee collected under Subsection (c). (V.T.I.C. Arts. 18.03 (part), 18.03-1 (part), 18.04 (part).)

Source Law

Art. 18.03. The attorney shall file with the Board of Insurance Commissioners a verified application for license setting forth and accompanied by:

(a) The name of the attorney and the title under which the business is to be conducted, . . .

(b) The location of the principal office.

(c) The kinds of insurance to be effected, . . .

(d) A copy of each form of policy or contract by which such insurance is to be effected.

(e) A copy of the form of power of attorney by virtue of which the attorney is to act for and bind the several underwriters and a copy of the articles of agreement entered into between the underwriters themselves and the attorney.

(f) The names and addresses of all underwriters, . . .

(g) A financial statement showing in detail the assets contributed or accumulated in the hands of the attorneys in fact, committee of underwriters, trustees and/or other officers of such underwriters at Lloyd's, together with the liabilities incurred and outstanding and the income received and disbursements made by the attorney for the underwriters.

(h) An instrument executed by each and all of the underwriters specially empowering the attorney to accept services of process for each underwriter in any action on any policy or contract of insurance and an instrument from the attorney to such Board delegating the attorney's powers in this respect to such Board.

Art. 18.03-1. The attorney for a Lloyds shall file with the Commissioner of Insurance a verified application for license setting forth the data and information required by law, and . . .

Art. 18.04. . . .

The attorney for such underwriters shall pay a fee of $10.00 to the State Board of Insurance upon the filing of the application for license.

. . .

Fees collected under this article must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund. Article 1.31A of this code applies to fees collected under this article.

Revisor's Note

(1) Subdivision (g), V.T.I.C. Article 18.03, refers to the "assets contributed or accumulated in the hands of" specified persons. The revised law substitutes "held by" for "contributed or accumulated in the hands of" because the terms are synonymous and the former is more concise.

(2) V.T.I.C. Article 18.04 requires fees to be deposited in the state treasury to the credit of the State Board of Insurance operating fund. Under the authority of Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund. The revised law is drafted accordingly.

Revised Law

Sec. 941.103. ISSUANCE OF CERTIFICATE OF AUTHORITY. On determination by the department that the underwriters and attorney in fact have complied with the law, the department shall, in accordance with Sections 801.001, 801.002, 801.051-801.055, 801.057, and 801.101, issue a certificate of authority to the attorney in fact. (V.T.I.C. Arts. 18.03-1 (part), 18.04 (part).)

Source Law

Art. 18.03-1. . . . upon complying with the law such Commissioner shall issue to any attorney applying therefor a license . . . .

Art. 18.04. . . .

Upon determination by the State Board of Insurance that such underwriters and their attorneys have fully complied with the law the Board shall issue a Certificate of Authority as provided by Article 1.14 of this code.

. . .

Revisor's Note

V.T.I.C. Article 18.03-1 in part provides that the certificate of authority must specify the kind or kinds of insurance to be issued by the Lloyd's plan and that the certificate of authority continues in force until surrendered by the attorney in fact or revoked or suspended. The revised law omits these provisions as duplicative of the provisions of V.T.I.C. Article 1.14, revised as Chapter 801. V.T.I.C. Article 1.14 is applicable to a certificate of authority issued to a Lloyd's plan under V.T.I.C. Article 18.04, revised in pertinent part in this section. The omitted law reads:

Art. 18.03-1. [. . . such Commissioner shall issue to any attorney applying therefor a license] specifying the kind or kinds of insurance which he is authorized to make, which shall continue in force until surrendered by the attorney or revoked or suspended by such Commissioner as authorized by law.

[Sections 941.104-941.150 reserved for expansion]

SUBCHAPTER D. OPERATION, POWERS, AND DUTIES OF LLOYD'S PLAN

Revised Law

Sec. 941.151. LIABILITY OF UNDERWRITER. (a) Subject to Subsection (c), an underwriter by contract with the persons insured may limit the underwriter's liability to the percentage of the loss that equals the ratio of the underwriter's subscription paid in cash or securities allowed by this chapter to the total guaranty fund contributed by all the underwriters.

(b) Subject to Subsection (c), an underwriter's total liability on all risks may be limited to the amount of the underwriter's subscription, as expressed in the underwriter's power of attorney and agreement with the attorney in fact.

(c) At least half of an underwriter's subscription must be paid or contributed to the guaranty fund in cash or admissible securities.

(d) An underwriter is responsible solely for the underwriter's liability as provided by the insurance contract. An underwriter is not liable as a partner. (V.T.I.C. Art. 18.13.)

Source Law

Art. 18.13. An underwriter at a Lloyd's may limit his total liability by contract with the persons insured to the proportionate part of the loss represented by the ratio which his subscription paid in, in cash and/or securities such as allowed by this chapter bears to the total guaranty fund contributed by the several underwriters and his total liability on all risks may be limited to the amount of his subscription as expressed in his power of attorney and agreement with the attorney in fact, provided at least half of the subscription of each underwriter must be paid or contributed to the guaranty fund in cash and/or admissible securities. Each underwriter shall be responsible solely for his own liability as fixed in the contract of insurance and not be liable as a partner.

Revised Law

Sec. 941.152. LIABILITY OF ADDITIONAL OR SUBSTITUTED UNDERWRITER. An additional or substituted underwriter is liable in the same manner and to the same extent as an original subscriber to the articles of agreement and power of attorney on file with the department. (V.T.I.C. Art. 18.14 (part).)

Source Law

Art. 18.14. Additional or substituted underwriters shall be bound in the same manner and to the same extent as original subscribers to the articles of agreement and power of attorney on file with the Board; and . . . .

Revised Law

Sec. 941.153. ACCRUAL OF PROFITS. The profits of a Lloyd's plan may accrue to an underwriter only on the basis of the underwriter's actual investment in cash or convertible securities, without regard to any obligation or subscription of the underwriter to pay additional cash or securities in the future. (V.T.I.C. Art. 18.15.)

Source Law

Art. 18.15. No profits shall accrue to an underwriter, except upon the basis of his actual investment in cash or convertible securities, disregarding any obligation or subscription to pay in additional cash or securities at a later date.

Revised Law

Sec. 941.154. ASSUMPTION OF RISK BY CERTAIN AFFILIATED INSURERS. An insurer who is subject to Article 5.26 may not directly or indirectly assume all or a substantial part of a risk covered by a policy written by a Lloyd's plan that is an affiliate of the insurer if the risk is written at a rate less than the rate that may be lawfully charged by:

(1) the insurer; or

(2) one of the insurer's affiliates that is subject to Article 5.26. (V.T.I.C. Art. 18.23A, Sec. (a).)

Source Law

Art. 18.23A. (a) An insurer subject to Article 5.26 of this code may not directly or indirectly assume all or a substantial part of any risk covered by a policy written by a Lloyd's that is an affiliate of that insurer if the risk is written at a rate less than the rate that may be lawfully charged by the insurer subject to Article 5.26 of this code, or any affiliate of the insurer that is subject to Article 5.26 of this code.

Revised Law

Sec. 941.155. PROMOTION OF LLOYD'S PLAN. (a) An individual, firm, or corporation may not be instrumental in organizing a Lloyd's plan if, in the organization of the Lloyd's plan, compensation is paid to the individual, firm, or corporation or to a representative of the individual, firm, or corporation for procuring underwriters or a guaranty fund for the Lloyd's plan unless the individual, firm, or corporation holds a permit issued by the department that authorizes the charging of a commission in connection with organizing the Lloyd's plan.

(b) Not more than 10 percent of the total amount of an underwriter's subscription to a Lloyd's plan may be paid to any person as a commission for the sale of units of or an interest in the Lloyd's plan or for procuring underwriters for the Lloyd's plan.

(c) This section applies to the continued organization or extension of a Lloyd's plan, if a commission is to be paid in connection with the organization or extension. With respect to a continued organization or extension of a Lloyd's plan, the commissioner may not refuse the permit because of the contemplated size or amount of the guaranty fund of the Lloyd's plan.

(d) After the permit has been granted, securities may not be accepted as contributions to the guaranty fund unless the securities have been approved in advance by the department as complying with this chapter with respect to the investment of the funds of a Lloyd's plan. (V.T.I.C. Art. 18.24, Secs. (1), (2), (4), (5).)

Source Law

Art. 18.24. (1) No person or persons, firm or corporation, shall be instrumental in the origination of a Lloyd's business if in such organization any money or property shall be paid over to such person, persons, firm or corporation, or their agent or representative, by way of commission or other compensation for procuring underwriters or guaranty fund for such Lloyd's, unless such person, persons, firm or corporation shall in advance make application to the Board of Insurance Commissioners and shall receive a permit from such Board to organize such Lloyd's and charge a commission in connection with such organization.

(2) In no event shall more than ten (10%) per cent of the total amount of the subscription to such an enterprise by any underwriter be paid to any person by way of commission for the sale of "units" or interest in such Lloyd's business or in the procuring of underwriters therefor.

(4) This article shall apply to the continued organization or the continued extension of any Lloyd's business which has heretofore been licensed by the Insurance Department of this State, if in such further extension of such business any commission is to be paid, but such permit shall not be refused because of the contemplated size or amount of the guaranty fund of such Lloyd's.

(5) After such permission shall have been granted for the organization of enlargements of a Lloyd's, no securities shall be accepted as contributions to the guaranty fund of such Lloyd's, unless such securities shall have been approved in advance by the Board of Insurance Commissioners as complying with this law relative to the investment of the funds of such organizations.

Revisor's Note

(1) Section (1), V.T.I.C. Article 18.24, refers to an "agent or representative." The revised law omits the reference to "agent" because, in context, the meaning of that term is included within the meaning of "representative."

(2) Section (1), V.T.I.C. Article 18.24, refers to the receipt of "any money or property . . . by way of commission or other compensation." The revised law substitutes the term "compensation" for the quoted language because "compensation" includes the concepts of money, property, or a commission.

(3) Section (3), V.T.I.C. Article 18.24, describes circumstances under which the article does not apply. The revised law omits that description as unnecessary because the article by its own terms would not apply under those circumstances. The omitted law reads:

(3) This article shall not apply to the organization or the enlargement of a Lloyd's in which no promotion expense is deducted from the contributions made by the underwriters, and no commission of any sort is paid for the procuring of underwriters or subscriptions to the guaranty fund of such business.

(4) Section (4), V.T.I.C. Article 18.24, refers to a Lloyd's plan that "has heretofore been licensed." Article 18.24 was originally enacted as Chapter 11, Acts of the 41st Legislature, 1st Called Session, 1929. It is clear from the context of the section that the section is intended to apply to a

Lloyd's plan that was licensed before the effective date of that act and to have continuing application to a Lloyd's plan organized or extended on or after that date. Therefore, the revised law omits the quoted language as unnecessary.

Revised Law

Sec. 941.156. REINSURANCE PERMITTED. This chapter does not prevent a domestic Lloyd's plan from reinsuring:

(1) the Lloyd's plan's excess lines with a solvent foreign Lloyd's plan acceptable to the department that does not hold a certificate of authority to engage in the business of insurance in this state; or

(2) any business from a foreign Lloyd's plan described by Subdivision (1). (V.T.I.C. Art. 18.21.)

Source Law

Art. 18.21. The provisions of this Chapter shall not prevent any Texas Lloyd's from reinsuring its excess lines with a solvent foreign Lloyd's, acceptable to the Board of Insurance Commissioners, which has no license to do business in Texas nor from reinsuring any business from such foreign Lloyd's.

[Sections 941.157-941.200 reserved for expansion]

SUBCHAPTER E. FINANCIAL REQUIREMENTS

Revised Law

Sec. 941.201. REQUIRED NET ASSETS. The department may not issue a certificate of authority to an attorney in fact unless the net assets contributed to the attorney in fact, a committee of underwriters, a trustee, or other officers as provided for in the articles of agreement constitute a guaranty fund and surplus over and above all of the Lloyd's plan's liabilities that is at least equal to the minimum capital stock and surplus required of a stock insurance company engaging in the same kinds of business. (V.T.I.C. Art. 18.05 (part).)

Source Law

Art. 18.05. [No attorney shall be licensed for the Underwriters at a Lloyd's] . . . until and unless the net assets contributed to the attorney, a committee of underwriters, trustee or other officers as provided for in the Articles of Agreement shall constitute a guaranty fund and surplus over and above all of its liabilities equal to the minimum capital stock and surplus required of a stock insurance company transacting the same kinds of business. . . .

Revised Law

Sec. 941.202. LIMITATION OF BUSINESS. (a) Except as provided by Subsection (c), a Lloyd's plan may not assume or write insurance risks in this state, for residents of this state, or covering property located in this state that produce an amount of net premium income that exceeds 10 times the value of the net assets of the underwriters.

(b) If the insurance risks written or assumed by a Lloyd's plan produce a net premium income that exceeds the limit specified by Subsection (a), the Lloyd's plan may not write or assume an additional insurance risk until the net assets have been increased to a level that brings the net premium income produced by the additional insurance risk within that limit.

(c) The limit imposed by Subsection (a) does not apply to a Lloyd's plan if:

(1) the Lloyd's plan's net assets equal at least the amount of money required of a stock insurance company engaged in the same kind of business in this state; or

(2) the department determines that the Lloyd's plan, through reinsurance or other contracts with other responsible and solvent insurers, has reduced the net lines at risk carried by the Lloyd's plan so that its operations are safe and its solvency is not in danger.

(d) An attorney in fact for a Lloyd's plan may not assume an insurance risk that exceeds one-tenth of the sum of the amount of the net assets of the underwriters as described in this subchapter and the amount of the additional liability assumed by the individual underwriters in the articles of agreement and in policies or contracts of insurance, unless the excess insurance risk is promptly reinsured. (V.T.I.C. Arts. 18.06 (part), 18.16.)

Source Law

Art. 18.06. The underwriters at a Lloyd's shall not assume nor write insurance obligations in Texas nor for citizens of Texas, nor covering property located in Texas which produce a net premium income in excess of ten times the net assets of such underwriters, and if at any time the liabilities assumed upon such insurance shall produce a net premium income greater than ten times such net assets, then no further insurance obligation shall be assumed until the net assets have been increased so as to admit of additional insurance obligations which will produce a premium income not greater than ten times such net assets; provided that when the net assets at a Lloyd's shall equal the sum of money which will be required of a stock insurance company doing the same character of business in Texas, then his limitation upon the volume of business to be written shall not apply further; provided further that if in the judgment and discretion of the Board of Insurance Commissioners such underwriters at a Lloyd's shall have effected reinsurance, or other contracts, with responsible and solvent insurance carriers reducing the net lines at risk carried by such underwriters at a Lloyd's so that their operations are safe and their solvency not in danger, then . . . .

Art. 18.16. No attorney for underwriters at a Lloyd's shall assume any one insurance risk exceeding one-tenth of the amount of the net assets of the underwriters as defined in this chapter and the additional liability assumed by the individual underwriters in the articles of agreement and in the policies or contracts of insurance, unless such excess shall be promptly reinsured.

Revisor's Note

V.T.I.C. Article 18.06 states that the Board of Insurance Commissioners may "renew or extend" the certificate of authority of a Lloyd's plan without regard to the limitation imposed on net assets, if the Lloyd's plan effects reinsurance or other contracts. Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amended Article 1.14, Insurance Code, to eliminate the requirement that a certificate of authority be renewed annually and to provide that a certificate of authority remains "in full force and effect until it is revoked, canceled or suspended." The act also provided that "all laws and parts of laws in conflict" with the act are expressly repealed. Article 1.14, revised in this code as Chapter 801, applies to a Lloyd's plan. Therefore, the revised law omits the reference to renewal of a certificate of authority. The revised law also omits the reference to extension of a certificate of authority as unnecessary. While the meaning of the term "extension" in this context is unclear, it is clear from the law as revised that a Lloyd's plan that effects reinsurance or other contracts in accordance with this section may continue to maintain its certificate of authority, and that the law does not otherwise impose a limitation on extension of the certificate of authority. The omitted law reads:

Art. 1806. . . . such Board may renew or extend the licenses of such underwriters, irrespective of this limitation.

Revised Law

Sec. 941.203. COMPUTATION OF RESERVE. A Lloyd's plan shall compute reserve liabilities for outstanding business and incurred losses on the same basis required for a stock insurance company engaged in the same kinds of business in this state. (V.T.I.C. Art. 18.08.)

Source Law

Art. 18.08. Underwriters at a Lloyd's are required to compute reserve liabilities for all outstanding business and for all incurred losses upon the same basis required for stock insurance companies doing the same classes and character of business in Texas.

Revised Law

Sec. 941.204. AUTHORIZED INVESTMENTS. (a) The minimum guaranty fund and surplus required of a Lloyd's plan under Sections 822.054, 822.202, 822.210, 822.211, and 941.201 must be:

(1) in cash; or

(2) invested as provided by:

(A) Section 822.204; or

(B) any other law governing the investment of the capital stock and minimum surplus of a capital stock insurance company engaged in the same kind of business.

(b) Funds of a Lloyd's plan other than the minimum guaranty fund and surplus described by Subsection (a) must, if invested, be invested as provided by:

(1) Article 2.10; or

(2) any other law governing the investment of the funds of a capital stock insurance company engaged in the same kind of business.

(c) A Lloyd's plan may purchase, hold, or convey real property in accordance with Section 862.002.

(d) A Lloyd's plan organized before August 10, 1943, and engaging in business under a certificate of authority issued by the former Board of Insurance Commissioners is not required to comply with this section except as to securities acquired on or after August 10, 1943, regardless of whether those securities were substituted for securities held before that date or were acquired from additional, successor, or substituted underwriters. (V.T.I.C. Arts. 18.05 (part), 18.09.)

Source Law

Art. 18.05. . . . The required net assets shall be invested following the licensing as provided in Article 2.08 as to minimum guaranty fund and surplus required, and as provided in Article 2.10 as to other funds.

Art. 18.09. The assets of Underwriters at a Lloyd's to the extent of the minimum required under the provisions of Article 2.02 and of Article 18.05 of this Chapter shall be cash or shall be invested in such securities as are eligible for investment of the capital stock and minimum surplus of stock insurance companies transacting the same sort of business, and the other assets of underwriters shall be invested, if at all, in such property or securities as the funds of the stock insurance companies doing the same sort of business may be invested in, except that only the surplus, in excess of the required minimum guaranty fund and surplus of a Lloyds' may be invested in the securities eligible for investment of surplus in excess of capital and minimum surplus of such similar stock insurance companies. Lloyds' organized prior to August 10, 1943, and doing business under Certificate of Authority from the Board of Insurance Commissioners shall not be required to conform to this Article except as to securities thereafter acquired, whether in substitution for securities then held or from additional, successor or substituted underwriters. Underwriters at a Lloyds' shall be permitted to purchase, hold or convey real estate in accordance with the provisions and subject to the limitations of Article 6.08 of this Code.

Revised Law

Sec. 941.205. JOINT CONTROL OF MINIMUM ASSETS. (a) To the extent of the minimum required under this subchapter, the assets of a Lloyd's plan must be made subject to the joint control of the attorney in fact and the department, in a manner satisfactory to the department, so that the assets may not be withdrawn, diverted, or spent without the approval of the department or for a purpose not permitted under this chapter.

(b) The underwriters are entitled to the interest or income accruing from property or securities placed under joint control under Subsection (a) as the interest or income becomes payable.

(c) As an alternative to submitting assets to joint control under Subsection (a), an attorney in fact for a Lloyd's plan engaged in business before August 20, 1929, may execute a bond in the amount of $25,000 for the safekeeping of assets, to be released only on approval of the department. The corporate surety and the form of the bond must be approved by the department. (V.T.I.C. Art. 18.10.)

Source Law

Art. 18.10. The assets of underwriters at a Lloyd's to the extent of the minimum required under the provisions of this chapter shall be submitted to and subjected to the joint control of the attorney in fact for such underwriters, and the Board of Insurance Commissioners, in some manner satisfactory to the Board, so that the same may not be withdrawn or diverted, or expended, except with the approval of the Board and the purposes provided for in this chapter. Such underwriters, however, shall be entitled to the interest or income accruing from such property or securities as may be placed under the joint control of such attorney in fact and the Board as and when the same is payable. Provided, however, in lieu of such joint control any attorney in fact at a Lloyd's now doing business in this State may give bond in the sum of Twenty-five Thousand ($25,000.00) Dollars for the safe keeping of assets, to be released only on approval of the

Board of Insurance Commissioners, and in such form and with corporate surety as shall be approved by the Board of Insurance Commissioners.

Revisor's Note

V.T.I.C. Article 18.10 refers to a Lloyd's plan "now doing business in this State." The quoted language was added to the law by Chapter 11, Acts of the 41st Legislature, 1st Called Session, 1929, which took effect August 20, 1929. It is clear from the context of that act that the quoted language refers to a Lloyd's plan already engaged in business at the time the act took effect. Therefore, the revised law substitutes "engaged in business before August 20, 1929," for the quoted language.

Revised Law

Sec. 941.206. HAZARDOUS FINANCIAL CONDITION, SUPERVISION, CONSERVATORSHIP, AND LIQUIDATION; IMPAIRMENT OF SURPLUS. (a) Articles 1.32, 21.28, and 21.28-A apply to a Lloyd's plan engaged in the business of insurance in this state.

(b) Section 5, Article 1.10, applies to a Lloyd's plan. (V.T.I.C. Art. 18.07; New.)

Source Law

Art. 18.07. Lloyds' companies shall be subject to the provisions of Section 5 of Article 1.10 of this Code.

Revisor's Note

V.T.I.C. Article 18.18, in part, established procedures applicable to the winding up of affairs of a Lloyd's plan that is insolvent or that is in a condition that renders the continuance of its business hazardous to the public. Article 18.18 was derived from V.A.C.S. Article 5022 and has not been substantively amended since 1929. After the enactment of Article 5022, the legislature established comprehensive procedures applicable to those Lloyd's plans. The later enacted provisions, which are contained in V.T.I.C. Article 1.32, originally enacted in 1975, V.T.I.C. Article 21.28, derived from law originally enacted in 1939, and V.T.I.C. Article 21.28-A, originally enacted in 1967, completely subsume and replace the related procedures established under Article 18.18. As a result, the revised law omits the pertinent portion of Article 18.18 as impliedly repealed and adds a reference to Articles 1.32, 21.28, and 21.28-A for the convenience of the reader. The omitted law reads:

Art. 18.18. Whenever it shall appear to the Board of Insurance Commissioners that the minimum assets provided for in Article 18.05 have become impaired, the Board shall immediately give notice to the attorney in fact for such Lloyd's to appear and show cause why the license of such attorney shall not be revoked, and if within thirty (30) days from the giving of such notice the impairment or insolvency shall not be made good by such underwriters, or their attorney, such license shall immediately be cancelled. If such attorney or other person shall make any advancement to make good such impairment, the claim for such advancement against the assets of such underwriters shall be deferred to the claims for losses under policies or contracts of insurance. If such impairment is not made good within the time prescribed, then the Board shall proceed to take charge of the assets of such underwriters, and to effect a reinsurance of all business outstanding in Texas or covering property located in Texas, and for that purpose, the Board shall have the right to use the net assets, and to make provision for the payment of outstanding claims and losses. In case reinsurance cannot be effected by the said Board, then the affairs of such underwriters at Lloyd's shall be wound up through receivership proceedings instituted by the Attorney General of Texas at the request of the Board.

. . .

[Sections 941.207-941.250 reserved for expansion]

SUBCHAPTER F. REGULATION OF LLOYD'S PLAN

Revised Law

Sec. 941.251. EXAMINATIONS. (a) The provisions of Articles 1.15 and 1.16 that relate to the examination of insurers apply to a Lloyd's plan.

(b) The department may examine the books and affairs of an attorney in fact for a Lloyd's plan. The attorney in fact and each deputy attorney in fact shall facilitate the examination and furnish any information reasonably required by the department. (V.T.I.C. Arts. 18.11, 18.11-1.)

Source Law

Art. 18.11. All of the provisions of Article 1.15 and of Article 1.16 relative to examination of companies shall apply to companies organized under this Chapter.

Art. 18.11-1. The Commissioner of Insurance may make examinations of the books and affairs of any attorney for underwriters at a Lloyds, and the attorney and his deputies shall facilitate such examination and furnish all information which such Commissioner may reasonably demand.

Revised Law

Sec. 941.252. ANNUAL REPORT. (a) An attorney in fact shall annually file with the department a verified report on a form prepared by the department of:

(1) the business conducted by the attorney in fact on behalf of the Lloyd's plan during the preceding year;

(2) the condition of the affairs of the Lloyd's plan; and

(3) any other information required by the department.

(b) The report must cover all of the business conducted by the attorney in fact on behalf of the Lloyd's plan, without regard to the place where the business was conducted. (V.T.I.C. Art. 18.12.)

Source Law

Art. 18.12. The attorneys for such underwriters shall annually file with the Board of Insurance Commissioners a verified report of the business done by the attorney for such underwriters during the previous year, and of the condition of its affairs, together with such other information as the Board of Insurance Commissioners may demand; such report shall be filed upon blanks prepared by the Board and shall cover the report of all the business of such underwriters, wherever the same may be conducted.

[Sections 941.253-941.300 reserved for expansion]

SUBCHAPTER G. FOREIGN LLOYD'S PLAN

Revised Law

Sec. 941.301. FOREIGN LLOYD'S PLAN; BOND OR MINIMUM NET ASSETS REQUIRED. (a) Except as provided by Subsection (b), the commissioner may not issue a certificate of authority to an attorney in fact if:

(1) the underwriters are not residents of this state; or

(2) the underwriters maintain their principal office outside of this state.

(b) The department may issue a certificate of authority to an attorney in fact in circumstances described by Subsection (a) if the underwriters, at their option:

(1) file a bond with the department that complies with Section 941.302; or

(2) maintain net assets in this state that:

(A) are subject to the joint control of the attorney in fact and the commissioner; and

(B) meet the requirements of Subchapter E regarding the minimum amount of net assets of a Lloyd's plan.

(c) A deposit of securities made under Subsection (b)(2) is considered to have been made on the same terms and conditions as a bond executed in accordance with Section 941.302.

(d) If there is recovery on a deposit or bond made under this section, the commissioner shall immediately demand that additional security be provided to increase the amount of the bonds to the minimum amount required by this section. The additional bond must be posted not later than the 30th day after the date the commissioner makes the demand. Successive recoveries may be made on a bond made under this section until the principal amount of the bond is exhausted. (V.T.I.C. Art. 18.19 (part).)

<u>Source Law</u>

Art. 18.19. In case underwriters at a Lloyd's who are nonresidents of Texas, or who maintain their principal office outside of Texas, apply for a permit to do business in Texas, such permit shall not be granted unless such underwriters have and maintain net assets in Texas which are subject to the joint control of their attorney in fact and the Board of Insurance Commissioners of this State sufficient to meet the minimum requirements of this chapter relative to the amount of net assets which underwriters at Lloyd's must have; or unless they submit to and file with the Board a bond . . . . If any underwriters desiring to do so, at their option, in lieu of giving the bond authorized by this article, shall submit admissible securities subject to the joint control of its attorney in fact and the Board of Insurance Commissioners, such deposits of securities shall be deemed to have been made upon such terms and conditions as provided by such bond.

If there shall be any recovery upon the bond or from the deposit hereinabove provided for, then the Board shall immediately demand additional security so as to bring the amount of the bonds up to the minimum sum required hereunder, which additional bond must be posted within thirty (30) days from the date of such demand. Provided, there may be successive recoveries on said bond until the principal sum thereof is exhausted.

<u>Revised Law</u>

Sec. 941.302. BOND OF FOREIGN LLOYD'S PLAN. (a) A bond filed under Section 941.301 must:

(1) be executed by corporate sureties that:

(A) meet the requirements imposed by the department; and

(B) are authorized to engage in guaranty, fidelity, and surety business in this state;

(2) be in a principal amount that equals the minimum amount of net assets of a Lloyd's plan under this subchapter;

(3) be payable to the department;

(4) be conditioned for the payment of all claims arising under insurance policies or contracts:

(A) issued in this state;

(B) issued to residents of this state; or

(C) covering property located in this state; and

(5) be held by the department for the benefit of any person with a valid claim arising under an insurance policy or

contract described by Subdivision (4).

(b) The bond must also provide that if a Lloyd's plan with outstanding insurance policies in favor of residents of this state or covering property located in this state becomes insolvent or ceases to engage in the business of insurance in this state, the department, after 10 days' notice to the attorney in fact for the Lloyd's plan or any receiver in charge of the Lloyd's plan's property and affairs, may contract with another insurer engaging in the business of insurance in this state for the assumption of and reinsurance by that insurer of:

(1) all of the Lloyd's plan's insurance risks outstanding in this state; and

(2) all unsatisfied lawful claims outstanding against the Lloyd's plan.

(c) If the department enters into a contract described by Subsection (b) and the attorney general approves the contract as reasonable, the assuming insurer is entitled to recover from the makers of the bond filed under Section 941.301 the amount of the premium or compensation for reinsurance that is specified in the contract.

(d) A bond filed under Section 941.301 binds any additional or substitute underwriters of the Lloyd's plan. (V.T.I.C. Art. 18.19 (part).)

Source Law

Art. 18.19. . . . [or unless they submit to and file with the Board a bond] executed by such corporate sureties as the Board may require, which corporate sureties must be licensed to do guaranty, fidelity and surety business in Texas, in a principal amount which would be required for net assets of underwriters at Lloyd's under foregoing provisions of this chapter, which said bond shall be payable to the Board of Insurance Commissioners, and which shall be conditioned for the payment of all claims arising upon contracts issued in Texas, or issued to residents and citizens of Texas, or covering property located in Texas, and which bond shall be held by the Board for the benefit of all persons having valid claims arising upon such contracts. It shall also provide that in the event the underwriters shall become insolvent or cease to transact business in this State at any time when there are outstanding policies of insurance in favor of citizens of this State, or upon property in this State, the Board shall have power, after having given ten (10) days' notice to the attorneys for such underwriters, or any receiver in charge of its property and affairs, to contract with any other insurance carrier transacting business in this State for the assumption and reinsurance by it of all insurance risks outstanding in this State of such underwriters, which contract shall also provide for the assumption by such reinsurance carrier of all outstanding and unsatisfied lawful claims then outstanding against such underwriters. In the event of the Board making any such contract, and if the same shall be approved as reasonable by the Attorney General, the reinsuring carrier shall be entitled to recover from the makers of such bond the amount of the premium or compensation so agreed upon for such reinsurance. Such bond shall also bind any additional or substitute underwriters at such Lloyd's. . . .

[Sections 941.303-941.350 reserved for expansion]

SUBCHAPTER H. CONVERSION TO CAPITAL STOCK INSURANCE COMPANY

Revised Law

Sec. 941.351. CONVERSION AUTHORIZED. The underwriters may convert a Lloyd's plan to a capital stock insurance company governed by Chapter 822 by complying with this subchapter. (V.T.I.C. Art. 18.23A, Sec. (c) (part).)

Source Law

(c) Underwriters making insurance under the Lloyd's plan pursuant to this chapter may convert the Lloyd's to a capital stock company governed by Chapter 2 of this code pursuant to the following provisions:

. . .

Revised Law

Sec. 941.352. ADOPTION OF CONVERSION PLAN. The underwriters by a two-thirds vote may adopt a plan to convert the Lloyd's plan to a capital stock insurance company. (V.T.I.C. Art. 18.23A, Sec. (c) (part).)

Source Law

(c) [Underwriters making insurance under the Lloyd's plan pursuant to this chapter may convert the Lloyd's to a capital stock company governed by Chapter 2 of this code pursuant to the following provisions:]

(1) By two-thirds vote, the underwriters may adopt a plan to convert the Lloyd's to a capital stock company.

. . .

Revised Law

Sec. 941.353. REQUIREMENTS OF CONVERSION PLAN. The conversion plan must provide that a capital stock insurance company will be formed in accordance with Chapter 822, except that:

(1) the company's required minimum capital and surplus must equal the required minimum guaranty fund and surplus of the Lloyd's plan;

(2) the company's assets may be in cash or in the form of an investment lawfully held by the Lloyd's plan; and

(3) an original examination under Section 822.058(b) is not required unless directed by the commissioner. (V.T.I.C. Art. 18.23A, Sec. (c) (part).)

Source Law

(c) [Underwriters making insurance under the Lloyd's plan pursuant to this chapter may convert the Lloyd's to a capital stock company governed by Chapter 2 of this code pursuant to the following provisions: . . .]

(2) The plan of conversion shall

provide that a capital stock company be formed in accordance with Chapter 2 of this code, except that:

(A) the required minimum capital and surplus of the capital stock company shall equal the required minimum guaranty fund and surplus of the Lloyd's;

(B) the assets of the capital stock company may be in cash or in the form of investment lawfully held by the Lloyd's under this code; and

(C) an original examination under Article 2.04 of this code is not required unless directed by the department.

. . .

Revised Law

Sec. 941.354. COMMISSIONER APPROVAL OF CONVERSION PLAN. On the commissioner's approval of the conversion plan and the formation of the capital stock insurance company, all assets, interests, obligations, and liabilities of the Lloyd's plan, including all outstanding policies and insurance obligations, are transferred to the capital stock insurance company, except as otherwise provided by this subchapter. (V.T.I.C. Art. 18.23A, Sec. (c) (part).)

Source Law

(c) [Underwriters making insurance under the Lloyd's plan pursuant to this chapter may convert the Lloyd's to a capital stock company governed by Chapter 2 of this code pursuant to the following provisions: . . .]

(3) On the department's approval of the plan of conversion and the formation of the capital stock company, all assets, interests, obligations, and liabilities of the Lloyd's, including all outstanding policies and insurance obligations of the Lloyd's, shall be converted to the capital stock company governed by the provisions of Chapter 2 of this code, except as otherwise herein provided.

. . .

Revised Law

Sec. 941.355. CONVERSION OF MEMBER OF HOLDING COMPANY SYSTEM. If the Lloyd's plan is a member of a holding company system identified in registration information that the Lloyd's plan filed with the department in accordance with Chapter 823, the rights and interests of the underwriters in the capital stock insurance company may be assigned at the time of conversion to any affiliated person in that holding company system. An assignment under this subsection is not:

(1) a change in control for the purposes of Section 822.212; or

(2) an acquisition of control for the purposes of Chapter 823. (V.T.I.C. Art. 18.23A, Sec. (c) (part).)

Source Law

(c) [Underwriters making insurance under the Lloyd's plan pursuant to this chapter may convert the Lloyd's to a capital stock company governed by Chapter 2 of this code pursuant to the following provisions: . . .]

(4) If the Lloyd's is a member of a holding company system identified in registration information filed by the Lloyd's with the department pursuant to Section 3, Article 21.49-1, of this code, the underwriters' rights and interests in the capital stock company may be assigned at the time of conversion to any affiliated person in such system. The result of such assignment shall not be considered a change in control for purposes of Article 2.20 of this code nor an acquisition of control for purposes of Section 5, Article 21.49-1, of this code.

[Sections 941.356-941.700 reserved for expansion]

SUBCHAPTER O. PENALTIES

Revised Law

Sec. 941.701. REVOCATION OF CERTIFICATE OF AUTHORITY. The commissioner shall revoke a certificate of authority issued to an attorney in fact if the attorney in fact or an underwriter violates this chapter or any other law of this state. (V.T.I.C. Art. 18.22.)

Source Law

Art. 18.22. If any attorney in fact or underwriters at Lloyd's shall violate any of the provisions of this chapter or any of the other laws of the State of Texas, which are applicable to them, the license of such attorney shall be revoked and the right to do business in Texas shall be cancelled.

Revisor's Note

(1) V.T.I.C. Article 18.22 refers to a violation by an attorney in fact or underwriter of a law "applicable to them." The revised law omits the quoted phrase as unnecessary. If a law is not applicable to an attorney in fact or underwriter, then the attorney in fact or underwriter cannot violate that law.

(2) V.T.I.C. Article 18.22 states that on violation of a law, the license (certificate of authority) of an attorney in fact shall be revoked and the "right to do business in Texas shall be cancelled." The revised law omits the quoted phrase as unnecessary. The revocation of the certificate of authority has the effect of terminating the authority of the attorney in fact to engage in business for the Lloyd's plan in this state.

Revised Law

Sec. 941.702. CRIMINAL PENALTY. (a) A person commits an offense if the person, as a principal, attorney in fact, agent, broker, or other representative, engages in the business of writing insurance on the Lloyd's plan in violation of this chapter.

(b) An offense under this section is punishable by a fine of not more than $500. (V.T.I.C. Art. 18.22-1.)

Source Law

Art. 18.22-1. Any person, who, as principal, attorney, agent, broker, or other representative, shall engage in the business of making insurance on the Lloyds plan, as defined in this chapter and by the Revised Statutes of this State, without complying with the requirements of such law governing such business, or who shall violate any provision of the four preceding articles, shall be fined not exceeding five hundred dollars.

Revisor's Note

(1) V.T.I.C. Article 18.22-1 was

formerly a part of the Penal Code of Texas, 1925, and by the authority of Section 5, Chapter 399, Acts of the 63rd Legislature, Regular Session, 1973, was transferred to Chapter 18, Insurance Code, revised as this chapter. At the time the article was transferred, references to other statutes within the article were not changed to reflect the transfer. As a result, the reference to "this chapter" is a reference to the statutes relating to Lloyd's plans that were transferred from the Penal Code of 1925 to Chapter 18, Insurance Code. The reference to "the Revised Statutes" is a reference to Chapter 18, Insurance Code, as it existed before its codification by the Insurance Code of 1951, and the reference to "the four preceding articles" is again a reference to the four statutes that preceded the substance of the article in the former Penal Code of 1925 and that were transferred to Chapter 18, Insurance Code, in 1973. The revised law is drafted accordingly.

(2) V.T.I.C. Article 18.22-1 provides that a person who engages in certain prohibited conduct "shall be fined not exceeding five hundred dollars." The revised law provides that a person who engages in the prohibited conduct "commits an offense" to be consistent with the terminology used in the Penal Code.

CHAPTER 942. RECIPROCAL AND INTERINSURANCE EXCHANGES

SUBCHAPTER A. GENERAL PROVISIONS

CHAPTER 942. RECIPROCAL AND INTERINSURANCE EXCHANGES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 942.001. DEFINITIONS. In this chapter:

(1) "Attorney in fact" means an individual, firm, or corporation who, under a power of attorney or other appropriate authorization of the attorney in fact, acts for subscribers of an exchange by issuing reciprocal or interinsurance contracts.

(2) "Exchange" means a reciprocal or interinsurance exchange and includes the office through which a reciprocal or interinsurance contract is exchanged.

(3) "Reciprocal or interinsurance contract" means an insurance policy or other contract that provides indemnity among a group of subscribers for certain losses.

(4) "Subscriber" means an individual, partnership, or corporation who, through an attorney in fact, enters into a reciprocal or interinsurance contract. (V.T.I.C. Arts. 19.01 (part), 19.02 (part), 19.03 (part), 19.10 (part); New.)

Source Law

Art. 19.01. Individuals, partnerships and corporations . . . hereby designated subscribers . . . to exchange reciprocal or interinsurance contracts . . . providing indemnity among themselves from any loss which may be insured against . . . .

Art. 19.02. [Such contracts may be executed by] a duly appointed attorney in fact duly authorized and acting for such subscribers. . . .

Art. 19.03. . . .

1. . . . The office or offices through which such indemnity contracts shall be exchanged shall be classified as reciprocal or interinsurance exchanges;

. . .

3. . . . power of attorney or other authority of such attorney in fact under which such insurance is to be effected or exchanged . . . .

Art. 19.10. . . . attorney-in-fact by whom or through whom are issued any policies of or contracts of indemnity of the character referred to herein . . . . [A Certificate of Authority issued as provided in this Article, shall fully authorize the named person, firm or corporation to exercise all of the powers and perform all of the duties of such attorney-in-fact;] . . . .

Revisor's Note

(1) V.T.I.C. Article 19.01 provides that "[i]ndividuals, partnerships and corporations . . . hereby designated subscribers" may exchange "reciprocal or interinsurance contracts . . . providing indemnity" for certain losses. The definitions of "subscriber" and "reciprocal or interinsurance contract" are added to the revised law to incorporate those concepts and to eliminate the frequent, unnecessary repetition of the substance of the definitions.

(2) V.T.I.C. Articles 19.02, 19.03, and 19.10 provide that an attorney in fact acts for the subscribers of an exchange under a power of attorney or other authority. The definition of "attorney in fact" is added to

the revised law to incorporate that concept and to eliminate the frequent, unnecessary repetition of the substance of the definition.

(3) V.T.I.C. Article 19.03 provides that "offices through which such indemnity contracts shall be exchanged shall be classified as reciprocal or interinsurance exchanges." The definition of "exchange" is added to the revised law to incorporate that concept and to eliminate the frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 942.002. SUBSCRIBER INSURANCE COVERAGE THROUGH EXCHANGE AUTHORIZED; LIFE INSURANCE PROHIBITED. (a) Except as provided by Subsection (c), subscribers of this state may exchange reciprocal or interinsurance contracts with other subscribers of this state or of another state or country to provide indemnity among those subscribers for a loss for which insurance coverage may be obtained under other law.

(b) A public, private, or municipal corporation organized under the laws of this state may act as a subscriber, and the right to exchange a reciprocal or interinsurance contract is:

(1) incidental to the purpose for which the corporation is organized; and

(2) in addition to the corporate rights and powers expressly conferred in the corporation's articles of incorporation.

(c) An exchange may not engage in the business of life insurance. (V.T.I.C. Arts. 19.01 (part), 19.09.)

Source Law

Art. 19.01. [Individuals, partnerships and corporations] of this State [hereby designated subscribers] are hereby authorized to exchange reciprocal or interinsurance contracts with each other, or with individuals, partnerships and corporations of other states and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws, excepting life insurance.

Art. 19.09. Any corporation, public, private or municipal, now or hereafter organized under the laws of this State, shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purpose for which such corporations are organized and as such granted as the rights and powers expressly conferred.

Revisor's Note

V.T.I.C. Article 19.09 refers to a corporation's "rights, powers and franchises." The revised law omits the reference to "franchises" as unnecessary because, in context, "franchises" is included in the meaning of "rights and powers." The power to grant a franchise is included in the powers granted through the articles of incorporation. Those specified powers are sufficient authority for the exercise of those powers, and it is unnecessary to refer to that authority in the revised law.

Revised Law

Sec. 942.003. LIMITED EXEMPTION FROM INSURANCE LAWS; APPLICABILITY OF CERTAIN LAWS. (a) An exchange is exempt from the operation of all insurance laws of this state except as specifically provided in this chapter or unless exchanges are specifically mentioned in the other law.

(b) An exchange is subject to:

(1) Section 5, Article 1.10;

(2) Articles 1.15, 1.15A, and 1.16;

(3) Subchapter A, Chapter 5;

(4) Articles 5.35, 5.37, 5.38, 5.39, and 5.40;

(5) Articles 21.21 and 21.49-8; and

(6) Sections 822.203, 822.205, 822.210, 822.212, 861.254(a)-(f), 861.255, 862.001(b), and 862.003.

(c) Subchapter M, Chapter 5, applies to the rates for motor vehicle insurance written by an exchange.

(d) The provisions of the Texas Business Corporation Act that relate to the indemnification of officers and directors apply to an exchange.

(e) Subscribers and their attorney in fact are subject to Sections 822.051, 822.057-822.060, and 822.201, except that:

(1) the declaration of the subscribers prescribed by Section 942.053 replaces the articles of incorporation; and

(2) the unencumbered surplus of the exchange

constitutes capital structure for purposes of Section 822.060. (V.T.I.C. Art. 5.01-2, Secs. (a) (part), (b) (part); Arts. 19.03 (part), 19.12, 19.13.)

Source Law

Art. 5.01-2. (a) . . . reciprocal and interinsurance exchanges are subject to this subchapter.

(b) . . . rates for motor vehicle insurance written by . . . a reciprocal or interinsurance exchange are determined as provided by the flexible rating program adopted under Subchapter M of this chapter.

Art. 19.03. . . .

5. . . . Such subscribers and their attorney in fact shall be subject to the provisions of Article 2.01 and of Article 2.04 of this Code, except that:

(a) The declaration of subscribers shall be in lieu of Articles of Incorporation; and

(b) Free surplus shall constitute capital structure within the meaning of Article 2.01.

Art. 19.12. (a) Reciprocal or inter-insurance exchanges shall be exempt from the operation of all insurance laws of this State except as in this Chapter specifically provided, or unless reciprocal or inter-insurance exchanges are specifically mentioned in such other laws.

(b) In addition to such Articles as may be made to apply by other Articles of this Code, reciprocal or inter-insurance exchanges shall not be exempt from and shall be subject to:

(1) Section 5, Article 1.10 of this Code; and

(2) Articles 1.15, 1.15A, 1.16, 2.20, 5.35, 5.37, 5.38, 5.39, 5.40, 6.12, 8.07, 21.21, and 21.49-8 of this Code.

Art. 19.13. The provisions of the Texas Business Corporation Act relating to the indemnification of officers and directors apply to and govern reciprocal or interinsurance exchanges organized under this chapter.

[Sections 942.004-942.050 reserved for expansion]

SUBCHAPTER B. FORMATION AND STRUCTURE OF EXCHANGE

Revised Law

Sec. 942.051. APPOINTMENT OF ATTORNEY IN FACT; APPROVAL BY DEPARTMENT OF POWER OF ATTORNEY OR OTHER AUTHORIZATION REQUIRED. (a) A reciprocal or interinsurance contract may be executed by an attorney in fact appointed by the subscribers of an exchange.

(b) A corporation may be organized in this state to act as attorney in fact for an exchange. The general laws regarding incorporation supplement this chapter to the extent consistent with this chapter. A corporation organized in this state to act as attorney in fact for an exchange may be organized under the Texas Business Corporation Act, notwithstanding any conflicting provision of that Act.

(c) The form of the power of attorney or other document granting authority to the attorney in fact and under which the insurance is to be exchanged is subject to approval by the department. This subsection may not be construed to permit the department to require the filing or use of uniform forms of those documents except as otherwise provided by this chapter. (V.T.I.C. Arts. 19.02 (part), 19.02A, 19.03 (part), 19.10-1 (part).)

Source Law

Art. 19.02. Such contracts may be executed by a duly appointed attorney in fact . . . .

A corporation may be organized in Texas to act as attorney-in-fact for a reciprocal or inter-insurance exchange. The general laws for incorporation shall supplement the provisions of this Act to the extent that they are not inconsistent with the provisions hereof.

Art. 19.02A. Notwithstanding any provision of the Texas Business Corporation Act, a corporation organized in Texas to act as attorney-in-fact for a reciprocal or inter-insurance exchange may be organized under the Texas Business Corporation Act.

Art. 19.03. . . .

3. . . . the form of power of attorney or other authority of such attorney in fact under which such insurance is to

be . . . exchanged, which form shall be subject to approval by the Board of Insurance Commissioners of Texas; provided, however, that except as to matters concerning which specific provision is made in this Chapter, nothing herein contained shall be so construed as to permit the said Board to require the filing or use of uniform forms of such instruments. . . .

Art. 19.10-1. Any attorney in fact duly appointed as such by the subscribers to execute contracts to exchange reciprocal or inter-insurance contracts according to the law governing such contracts . . . .

Revisor's Note

V.T.I.C. Article 19.03 refers to the "Board of Insurance Commissioners of Texas." Under Chapter 499, Acts of the 55th Legislature, Regular Session, 1957, administration of the insurance laws of this state was reorganized and the powers and duties of the Board of Insurance Commissioners were transferred to the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the "Board of Insurance Commissioners" and the "State Board of Insurance" have been changed appropriately.

Revised Law

Sec. 942.052. SECURITY REQUIREMENTS. (a) Except as provided by Subsection (d), to act as an attorney in fact, an individual, firm, or corporation must execute a good and sufficient fidelity bond that obligates the principal and surety to pay a pecuniary loss of money or property, not exceeding the amount of the bond, that is sustained by the exchange through fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or wilful misapplication on the part of the attorney in fact, directly or through connivance with others.

(b) The bond must:

(1) be acceptable to the department;

(2) be payable to the subscribers or the department; and

(3) be in the amount of:

(A) $25,000 for an individual or firm; or

(B) $50,000 for a corporation.

(c) If the conditions of the bond are violated, the insurance supervisory authority of any state in which the attorney in fact is authorized to engage in the business of the exchange may bring an action to enforce the bond on behalf of the subscribers.

(d) Instead of a bond, an attorney in fact may deposit with the appropriate official of the exchange's state of domicile cash or securities of the kind in which a general casualty company is authorized to invest its funds. The deposit must be made in the same amount, and must be conditioned, approved, and payable in the same manner, as a bond required under this section. (V.T.I.C. Art. 19.02 (part).)

<u>Source Law</u>

Art. 19.02. . . . Any person, firm or corporation may act as such attorney in fact, provided such attorney in fact shall make a good and sufficient fidelity bond acceptable to the Board of Insurance Commissioners of Texas and payable to the subscribers at the exchange, or, in lieu thereof, payable to the said Board of Insurance Commissioners, such bond to be in the sum of Twenty-five Thousand ($25,000.00) Dollars in the case of an individual or firm, and Fifty Thousand ($50,000.00) Dollars in the case of a corporation, which said bond shall obligate the principal and surety to pay such pecuniary loss, not exceeding the penalty of the bond, as the exchange shall sustain of money or property by an act or acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or wilful misapplication on the part of the said attorney in fact directly or through connivance with others, and in the event of any violation of the conditions of said bond, the insurance supervisory authority of any state in which the attorney in fact is authorized to

transact the business of the exchange may bring suit to enforce the penalty of the bond on behalf of the subscribers; provided, that a deposit with the proper lawful authority of the home state of such exchange of cash or securities of the kind in which general casualty companies may invest their funds, in like amount, conditioned, approved and payable in like manner, may be used in lieu of such bond.

. . .

Revised Law

Sec. 942.053. SUBSCRIBER DECLARATION. (a) On entering into a reciprocal or interinsurance contract, the subscribers, through the attorney in fact, shall file with the department a declaration verified by the oath of the attorney in fact.

(b) The declaration must include:

(1) the name of the proposed exchange;

(2) the kinds of insurance to be provided under the reciprocal or interinsurance contract;

(3) a copy of the form of the power of attorney or other authorization of the attorney in fact under which the insurance is to be provided;

(4) the location of each office from which the reciprocal or interinsurance contracts are to be issued; and

(5) any other information prescribed by the department, including an affidavit comparable to the affidavit prescribed by Section 822.057(a)(3). (V.T.I.C. Art. 19.03 (part).)

Source Law

Art. 19.03. Such subscribers, so contracting among themselves, shall, through their attorney in fact file with the Board of Insurance Commissioners a declaration verified by the oath of such attorney in fact setting forth:

1. The name or title of the office at which subscribers propose to exchange such indemnity contracts. . . . ;

2. The kind or kinds of insurance to be effected or exchanged . . . ;

3. A copy of the form of power of attorney or other authority of such attorney in fact under which such insurance is to be effected or exchanged . . . ;

4. The location of the office or

offices from which such contracts or agreements are to be issued;

5. Such other information as may be prescribed by the Board, including the affidavit or affidavits provided by Article 2.05.

. . .

Revisor's Note

(1) V.T.I.C. Article 19.03 refers to the "name or title of the office." The revised law omits "title" because, in context, "title" is included within the meaning of "name."

(2) V.T.I.C. Article 19.03 refers to the kind or kinds of insurance to be exchanged, "provided that same shall not include life insurance." The revised law omits the quoted language as unnecessary. Under V.T.I.C. Article 19.01, revised in relevant part as Section 942.002, an exchange is prohibited from engaging in the business of life insurance, and it is unnecessary to repeat that prohibition in this section.

(3) V.T.I.C. Article 19.03 requires the subscriber declaration to include "the affidavit or affidavits provided by Article 2.05." V.T.I.C. Article 2.05, revised as Section 822.057, requires the persons incorporating an insurance company to certify that the articles of incorporation are accurate and that the capital and surplus of the company belong to the company. The revised law refers to an "affidavit comparable to the affidavit prescribed by" Article 2.05 because an exchange may operate without incorporating.

Revised Law

Sec. 942.054. NAME OF EXCHANGE. (a) The name of an exchange must contain the term "reciprocal," "inter-insurance exchange," "underwriters," "association," "exchange," "underwriting," "inter-insurers," or "inter-insurors."

(b) The name selected for an exchange may not be so similar to the name of a similar organization or an insurer that, in the opinion of the department, the name is calculated to confuse or deceive. (V.T.I.C. Art. 19.03 (part).)

Source Law

Art. 19.03. . . .

1. . . . Said name or title shall contain the word "reciprocal," "inter-insurance exchange," "underwriters," "association," "exchange," "underwriting," "inter-insurers," or "inter-insurors," and shall not be so similar to any other name or title previously adopted by a similar organization, or by any insurance corporation or association, as in the opinion of said Board of Insurance Commissioners is calculated to confuse or deceive. . . .

Revisor's Note

Section 1, V.T.I.C. Article 19.03, refers to the "name or title" of an exchange. The revised law omits "title" for the reason stated in Revisor's Note (1) to Section 942.053.

Revised Law

Sec. 942.055. OFFICE LOCATIONS. The attorney in fact shall maintain the offices of the exchange at the places designated by the subscribers in the power of attorney or other authorization. (V.T.I.C. Art. 19.02 (part).)

Source Law

Art. 19.02. . . . The office or offices of such attorney may be maintained at such place or places as may be designated by the subscribers in the power of attorney.

. . .

Revisor's Note

V.T.I.C. Article 19.02 refers to "places as may be designated by the subscribers in the power of attorney." The revised law substitutes "power of attorney or other authorization" for "power of attorney" for consistency with the law revised in Section 942.051.

[Sections 942.056-942.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 942.101. CERTIFICATE OF AUTHORITY REQUIRED; EFFECT ON FOREIGN CORPORATIONS. (a) An attorney in fact must hold a certificate of authority issued by the department under Sections

801.001, 801.002, 801.051-801.055, 801.057, 801.101, and 801.102. A certificate of authority obtained in accordance with this section authorizes the attorney in fact named in the certificate to exercise all powers and perform all duties of an attorney in fact.

(b) A corporation required to obtain a certificate of authority from the department under this section is not considered to be engaging in business in this state within the meaning of any law applying to foreign corporations. (V.T.I.C. Art. 19.10 (part).)

<u>Source Law</u>

Art. 19.10. Such attorney-in-fact . . . shall procure from the State Board of Insurance of Texas a Certificate of Authority as provided in Article 1.14, and . . . .

A Certificate of Authority issued as provided in this Article, shall fully authorize the named person, firm or corporation to exercise all of the powers and perform all of the duties of such attorney-in-fact; provided, that any corporation acting as the attorney-in-fact for a reciprocal or inter-insurance exchange which is required to procure a Certificate of Authority from the State Board of Insurance of Texas shall not be deemed to be doing business in this state within the meaning of any laws applying to foreign corporations.

<u>Revisor's Note</u>

V.T.I.C. Article 19.10 refers to requirements for "renewal Certificates of Authority." That reference was added by Section 2, Chapter 172, Acts of the 56th Legislature, Regular Session, 1959. However, during the same session, in Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, the legislature also amended V.T.I.C. Article 1.14 and eliminated the requirement that certificates of authority be periodically renewed. Chapter 194 further provided that "all laws and parts of laws in conflict herewith [that chapter] are hereby expressly repealed . . . to the extent that they require periodic renewal of certificates of authority." Under basic rules of statutory construction, codified in Sections

311.025 and 312.014, Government Code, if it is impossible to read two acts of the same legislative session together so that effect may be given to both, the latest enactment is read as an implied repeal of the earlier act to the extent of the conflict. The last legislative action on Chapter 172 occurred on April 29, 1959. The last legislative action on Chapter 194 occurred on May 7, 1959. Under Sections 311.025 and 312.014, Government Code, the provision adopted under Chapter 194 that eliminates periodic renewal of certificates of authority impliedly repealed the provision regarding renewal requirements adopted under Chapter 172. The revised law accordingly omits the Chapter 172 provision. The omitted law reads:

Art. 19.10. . . . the provisions of Article 2.20 shall be applicable as well as to renewal Certificates of Authority.

[Sections 942.102-942.150 reserved for expansion]

SUBCHAPTER D. OPERATION, POWERS, AND DUTIES OF EXCHANGE

Revised Law

Sec. 942.151. SUBSCRIBER LIABILITY FOR CERTAIN CONTINGENT PREMIUMS. (a) Except as provided by Section 942.152 and Subsection (b), if a certificate of authority is issued as provided by Subchapter C, the power of attorney or other authorization executed by the subscribers must provide that, in addition to the premium or premium deposit specified in the reciprocal or interinsurance contract, the subscribers are liable for a contingent premium equal to one additional annual premium or premium deposit.

(b) If the subscribers and their attorney in fact are authorized to issue reciprocal or interinsurance contracts for cash premiums only, the power of attorney or other authorization may waive all contingent premiums. (V.T.I.C. Art. 19.03 (part).)

Source Law

Art. 19.03. . . .

3. . . . If a Certificate of Authority is issued as provided by Article 19.10 and Article 2.20, the power of attorney or other authority executed by the subscribers at any such exchange shall provide that such subscribers at such exchange shall be liable, in addition to the

premium or premium deposit specified in the policy contract, to a contingent liability equal in amount to one (1) additional annual premium or premium deposit. . . . When any such subscribers and their attorney in fact shall be authorized to issue policies for cash premiums only, in pursuance of the authority of this Article, it may waive all contingent premiums.

. . .

Revisor's Note

(1) V.T.I.C. Article 19.03 refers to a certificate of authority "issued as provided by Article 19.10 and Article 2.20." Article 19.10, revised in part as Section 942.101, provides the certificate of authority requirements for an exchange. Article 2.20, as enacted by Section 11, Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, contained renewal requirements for certificates of authority. The reference to Article 2.20 is omitted from the revised law because that article, which has been amended to relate to the increase of certain capital and surplus requirements, no longer contains certificate of authority requirements.

(2) The part of V.T.I.C. Article 19.03 revised in this section refers to "a contingent liability" equal to an additional annual premium or premium deposit payment. The last sentence of that part of the article refers to "contingent premiums." The revised law substitutes "contingent premium" for the reference to "contingent liability" for consistency.

Revised Law

Sec. 942.152. SUBSCRIBER LIMITED LIABILITY BASED ON CERTAIN MINIMUM CAPITAL AND SURPLUS. If the unencumbered surplus of an exchange is at least equal to the minimum capital stock and minimum surplus required of a stock insurance company engaged in the same kinds of business, the subscribers of the exchange may provide by agreement that the premium or premium deposit specified in the reciprocal or interinsurance contract constitutes the entire liability of the subscribers through the exchange. (V.T.I.C. Art. 19.03 (part).)

Source Law

Art. 19.03. . . .

3. . . . Such subscribers at such exchange may provide by agreement that the premium or premium deposit specified in the policy contract on all forms of insurance except life shall constitute their entire liability through the exchange if the free surplus of such exchange is equal to the minimum capital stock and minimum surplus required of a stock company transacting the same kinds of business. . . . Such last mentioned provision may be eliminated if the free surplus of such exchange is equal to the minimum capital stock and minimum surplus required of a stock company transacting the same kinds of business. . . .

Revisor's Note

(1) V.T.I.C. Article 19.03 refers to the premium or premium deposit specified in the policy contract "on all forms of insurance except life." The revised law omits the quoted language as unnecessary for the reason stated in Revisor's Note (2) to Section 942.053.

(2) V.T.I.C. Article 19.03 refers to the "free surplus" of an exchange. Throughout this chapter, the revised law substitutes "unencumbered surplus" for "free surplus" because, in context, the phrases are synonymous and the phrase "unencumbered surplus" is more consistent with modern usage.

Revised Law

Sec. 942.153. PRIOR AUTHORITY NOT AFFECTED. This chapter does not affect any authority that existed before September 6, 1955, that allowed the subscribers of an exchange and their attorney in fact to write non-assessable policies in this state, subject to any prerequisite imposed by law on that authority. (V.T.I.C. Art. 19.03 (part).)

Source Law

Art. 19.03. . . .

If up to the time of the effectiveness of this Act such subscribers and their attorney in fact were authorized to write non-assessable policies in Texas under the provisions of this Code, such subscribers and their attorney in fact shall not be denied such authority by reason of provisions which are contained herein that were not contained in this Insurance Code immediately prior to the effective date of this Act, so long as such company is complying with Article 2.20 of this Code as added by this Act;

. . .

Revisor's Note

Section 3, V.T.I.C. Article 19.03, provides in relevant part that subscribers who were authorized to write non-assessable policies "up to the time of effectiveness of this Act" are not denied that authority "by reason of provisions which are contained herein" that were not part of the Insurance Code "immediately prior to the effective date of this Act" if the subscribers are in compliance with Article 2.20 "as added by this Act."

The "Act" to which Section 3 refers is Chapter 117, Acts of the 54th Legislature, Regular Session, 1955, effective September 6, 1955. The reference to provisions "contained herein" refers to the requirements adopted under Section 3, as added by Chapter 117. Therefore, the subscribers are authorized to continue to write non-assessable policies, notwithstanding any conflicting requirements under Section 3, if the subscribers are in compliance with Article 2.20, as added by Chapter 117.

V.T.I.C. Article 2.20, as added by Chapter 117, imposed renewal requirements for a certificate of authority, based in part on compliance with certain minimum capital and surplus requirements. The requirement that a certificate of authority be renewed was repealed by Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959. The minimum capital and surplus requirements imposed under Article 2.20 have been amended significantly several times since 1955.

It is unclear whether any insurer that was writing non-assessable policies in 1955 still exists. To the extent that Section 3, V.T.I.C. Article 19.03, authorizes the continued writing of non-assessable policies by those insurers, the revised law preserves that authority.

Revised Law

Sec. 942.154. STATEMENTS RELATING TO INDEMNITY AMOUNTS. (a) The attorney in fact for an exchange shall file with the department a sworn statement that shows the maximum amount of indemnity on any single risk.

(b) The attorney in fact for an exchange shall, as required by the department, file with the department a sworn statement that:

(1) the attorney has examined the commercial rating of each subscriber, as established by the reference book of a commercial agency with at least 100,000 subscribers; and

(2) based on the examination or other information in the attorney's possession, it appears that no subscriber has assumed on any single risk an amount greater than 10 percent of that subscriber's net worth. (V.T.I.C. Art. 19.05.)

Source Law

Art. 19.05. Such attorney shall file with the Board of Insurance Commissioners a statement under the oath of such attorney showing the maximum amount of indemnity upon any single risk, and such attorney shall, whenever and as often as the same shall be required, file with such Board a statement verified by his oath to the effect that he has examined the commercial rating of such subscribers as shown by the reference book of a commercial agency having at least one hundred thousand (100,000) subscribers, and that from such examination or from other information in his possession it appears that no subscriber has assumed on any single risk an amount greater than ten (10%) per cent of the net worth of such subscriber.

Revised Law

Sec. 942.155. FINANCIAL REQUIREMENTS. (a) An exchange shall maintain at all times an unencumbered surplus over and above all liabilities that is at least equal to the minimum capital stock and surplus required of a stock insurance company engaged in the same kinds of business.

(b) An exchange shall maintain at all times the reserves required by the laws of this state or by rules adopted by the commissioner to be maintained by stock insurance companies engaged in the same kinds of business.

(c) An exchange shall maintain the required assets as to:

(1) minimum surplus requirements, as provided by Section 822.204; and

(2) other funds, as provided by Article 2.10.

(V.T.I.C. Art. 19.06 (part).)

Source Law

Art. 19.06. There shall be maintained at all times a surplus over and above all liabilities equal to the minimum capital stock and surplus required of a stock insurance company transacting the same kinds of business.

There shall be maintained at all times such reserves as are required, or which, by the laws of this State or by the lawful rules and regulations of the Board of Insurance Commissioners, hereafter may be required, to be maintained by stock insurance companies transacting the same kind or kinds of insurance business.

The required assets of such exchanges shall be maintained as to minimum surplus requirements as provided in Article 2.08 of this Code, and as to other funds, as provided in Article 2.10 of this Code.

. . .

Revisor's Note

V.T.I.C. Article 19.06 refers to the "rules and regulations of the Board of Insurance Commissioners." The reference to "regulations" is omitted from the revised law because under Section 311.005, Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law

Sec. 942.156. ISSUANCE OF FIDELITY AND SURETY BOND INSURANCE; DEPOSIT REQUIRED. (a) If a domestic exchange writes fidelity or surety bond insurance in this state, the exchange shall keep on deposit with the comptroller money, bonds, or other securities in an amount of not less than $50,000. The department shall approve for the deposit securities described by Article 2.10, and the exchange shall maintain the approved securities intact at all times.

(b) A foreign exchange that writes fidelity or surety bond insurance in this state shall file with the department evidence satisfactory to the department that the exchange has, for the protection of its subscribers, at least $100,000 in money, bonds, or other securities as described by Article 2.10 on deposit with the comptroller or other appropriate official of its state of domicile or in escrow under that official's supervision and control in a reliable bank or trust company. If those bonds or other securities are not acceptable to and approved by the department, the department may deny the attorney in fact for the exchange a certificate of authority. (V.T.I.C. Art. 19.06 (part).)

<u>Source Law</u>

Art. 19.06. . . . If fidelity and surety bond insurance is exchanged in this State by any reciprocal exchange, there shall be kept on deposit with the comptroller, money, bonds, or other securities in an amount not less than $50,000.00. Such securities as described in Article 2.10 of this Code shall be approved by the Board of Insurance Commissioners, and this amount shall be kept intact at all times. Any foreign exchange writing fidelity and surety bonds in this State shall file with the Board of Insurance Commissioners evidence, satisfactory to the Board of Insurance Commissioners, that it has on deposit with the comptroller or other proper officials of its home state, or in escrow under his supervision and control in some reliable bank or trust company, $100,000.00 or more, in money, bonds or other securities as described in Article 2.10 of this Code for the protection of its policyholders; provided further, that if said bonds and securities herein referred to are not acceptable to and approved by the Board of Insurance Commissioners of Texas, said Board shall have the right and authority to deny the attorney in fact a Certificate of Authority.

<u>Revisor's Note</u>

V.T.I.C. Article 19.06 refers to certain requirements for "fidelity and surety bond insurance . . . . exchanged in this State by any reciprocal exchange." The article then refers to different requirements for a "foreign exchange writing fidelity and surety bonds in this State." To clarify the first reference, revised as Subsection (a), the revised law refers to a "domestic" exchange. In the reference to a foreign exchange, revised as Subsection (b), the revised law refers to "fidelity or surety bond insurance" for consistency with the terminology used in Subsection (a).

Revised Law

Sec. 942.157. TRANSACTIONS BETWEEN CERTAIN INSURERS AND AFFILIATED EXCHANGES. (a) In this section, "affiliate" has the meaning assigned by Section 823.003.

(b) An insurer subject to Article 5.26 may not directly or indirectly assume all or a substantial part of any risk covered by a reciprocal or interinsurance contract written by an exchange that is an affiliate of that insurer if the risk is written at a rate less than the rate that may be lawfully charged by the insurer or any affiliate of the insurer that is subject to Article 5.26. (V.T.I.C. Art. 19.12A.)

Source Law

Art. 19.12A. (a) An insurer subject to Article 5.26 of this code may not directly or indirectly assume all or a substantial part of any risk covered by a policy written by a reciprocal exchange that is an affiliate of that insurer if the risk is written at a rate less than the rate that may be lawfully charged by the insurer subject to Article 5.26 of this code or any affiliate of the insurer that is subject to Article 5.26 of this code.

(b) For purposes of this article, "affiliate" has the meaning assigned by Section 2, Article 21.49-1 of this code.

Revised Law

Sec. 942.158. ADVANCES OF MONEY BY ATTORNEY IN FACT. (a) The attorney in fact for an exchange may advance to the exchange any amount of money necessary to conduct the business of the exchange, including any amount necessary to enable the exchange to comply with a legal requirement.

(b) Subject to the approval of the department, the advanced amount and any agreed interest on that amount, not exceeding 10 percent a year:

(1) is payable only from the surplus of the exchange

remaining after providing for all reserves, other liabilities, and required surplus; and

(2) may not otherwise be a liability or claim against the exchange or any of the exchange's assets.

(c) A commission, promotion expense, or other bonus may not be paid in connection with the advance of money to the exchange.

(d) The amount of each advance must be reported in the exchange's annual report.

(e) The department may not arbitrarily refuse approval under Subsection (b). (V.T.I.C. Art. 19.07.)

Source Law

Art. 19.07. Any attorney in fact of such exchange may advance to such exchange any sum or sums of money necessary for the purpose of its business or to enable it to comply with any requirement of law, and such moneys and interest thereon as may have been agreed upon, not exceeding ten (10%) per cent per annum, shall be payable, subject to the approval of the Board of Insurance Commissioners (which approval shall not be arbitrarily refused), only out of the surplus remaining, after providing for all reserves, other liabilities and required surplus, and shall not otherwise be a liability or claim against the exchange or any of its assets. No commission or promotion expenses, or other bonus, shall be paid in connection with the advance of any such money to the exchange, and the amount of all such advances shall be reported in each annual statement.

Revised Law

Sec. 942.159. VIOLATION BY ATTORNEY IN FACT OF REQUIREMENTS REGARDING INDEMNITY CONTRACTS; CRIMINAL PENALTY. (a) An attorney in fact commits an offense if the attorney in fact:

(1) exchanges a reciprocal or interinsurance contract without first complying with the law governing the contract; or

(2) directly or indirectly solicits or negotiates an application for the contract without first complying with the law governing the contract.

(b) Subsection (a) does not apply to an action taken by an attorney in fact for the purpose of applying for a certificate of authority from the commissioner as provided by this chapter.

(c) An offense under this section is punishable by a fine of not less than $100 or more than $1,000. (V.T.I.C. Art. 19.10-1 (part).)

Source Law

Art. 19.10-1. Any attorney in fact [duly appointed as such by the subscribers to execute contracts to exchange reciprocal or inter-insurance contracts according to the law governing such contracts,] who shall, except for the purpose of applying for certificate of authority from the Commissioner of Insurance as provided for by such law, exchange any contract of indemnity of the kind and character specified in such law, or shall directly or indirectly solicit or negotiate any application for same without first complying with the law governing such contracts, shall be fined not less than one hundred nor more than one thousand dollars.

Revisor's Note

V.T.I.C. Article 19.10-1 provides that an attorney in fact who engages in certain prohibited conduct "shall be fined not less than one hundred nor more than one thousand dollars." The revised law provides that an attorney in fact who engages in the prohibited conduct "commits an offense" to be consistent with the terminology used in the Penal Code.

[Sections 942.160-942.200 reserved for expansion]

SUBCHAPTER E. REGULATION OF EXCHANGES

Revised Law

Sec. 942.201. ANNUAL REPORT. (a) Not later than March 1 of each year, the attorney in fact for an exchange shall submit to the department a report covering the previous year ending December 31.

(b) The report must:

(1) demonstrate that the financial condition of affairs at the exchange is in accordance with the financial requirements of this chapter under Section 942.155; and

(2) provide any additional information and reports as required to show:

(A) the total amount of premiums or deposits collected;

(B) the total amount of losses paid;

(C) the total amounts returned to subscribers; and

(D) the amounts retained for expenses.

(c) The attorney in fact is not required to provide in the report the name and address of any subscriber. (V.T.I.C. Art. 19.08 (part).)

Source Law

> Art. 19.08. Such attorney shall make an annual report to the Board of Insurance Commissioners for each calendar year, which report shall be made on or before March 1st, for the previous calendar year ending December 31, showing the financial condition of affairs at the office where such contracts are issued is in accordance with the standard of solvency provided for herein, and shall furnish such additional information and reports as may be required to show the total premiums or deposits collected, the total losses paid, the total amounts returned to subscribers, and the amounts retained for expenses. Such attorney shall not be required to furnish the name and address of any subscriber. . . .

Revised Law

Sec. 942.202. EXAMINATION BY DEPARTMENT. The business affairs and assets of an exchange, as shown at the office of the attorney in fact, are subject to examination by the department. (V.T.I.C. Art. 19.08 (part).)

Source Law

> Art. 19.08. . . . The business affairs and assets of said reciprocal or interinsurance exchanges, as shown at the office of the attorney thereof, shall be subject to examination by such Board.

Revised Law

Sec. 942.203. FEES; TAXES; FILING FEE. (a) To the extent applicable, the schedule of fees established under Article 4.07 applies to an exchange and the exchange's attorney in fact.

(b) An exchange is subject to Articles 4.04, 4.10, 4.11, 5.12, 5.24, 5.49, and 5.68.

(c) The comptroller shall collect the taxes and the filing fee for the annual report. (V.T.I.C. Art. 19.11.)

Source Law

> Art. 19.11. The schedule of fees set out in Article 4.07 of this Code, so far as pertinent, shall apply to reciprocal

exchanges and their attorneys in fact. Said exchanges shall be subject to the provisions of Articles 4.02, 4.04, 4.10, 4.11, 5.12, 5.24, 5.49, and 5.68 of this Code. The comptroller shall collect the taxes and the annual statement filing fee.

Revisor's Note

V.T.I.C. Article 19.11 provides that an exchange is subject to certain articles of the Insurance Code, including Article 4.02. V.T.I.C. Article 4.02 provides only that "[e]ach such insurance organization," meaning an insurance company organized under the laws of this state, "shall be subject to the provisions of Articles 4.13, 4.14, and 4.15 of this code." The revised law omits the reference to Article 4.02 because Articles 4.13, 4.14, and 4.15 were repealed by Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, and the reference to Article 4.02 thus has no substantive meaning.

[Chapters 943-960 reserved for expansion]

SUBTITLE H. OTHER ENTITIES

CHAPTER 961. NONPROFIT LEGAL SERVICES CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

[Sections 961.005-961.050 reserved for expansion]

SUBCHAPTER B. FORMATION AND STRUCTURE OF NONPROFIT LEGAL SERVICES CORPORATIONS

[Sections 961.053-961.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

[Sections 961.103-961.150 reserved for expansion]

SUBCHAPTER D. BOARD OF DIRECTORS; PERSONNEL

[Sections 961.154-961.200 reserved for expansion]

SUBCHAPTER E. REGULATION OF NONPROFIT
LEGAL SERVICES CORPORATIONS

SUBCHAPTER F. BENEFITS PROVIDED BY NONPROFIT LEGAL
SERVICES CORPORATIONS

SUBCHAPTER G. CONTRACTS WITH ATTORNEYS

SUBCHAPTER H. AGENTS

CHAPTER 961. NONPROFIT LEGAL SERVICES CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 961.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person applying for a contract for legal services to be performed through a nonprofit legal services corporation.

(2) "Benefit certificate" means a document issued to a participant that states the benefits and other required matters under a group contract for legal services or an individual contract for legal services issued to a participant.

(3) "Contracting attorney" means an attorney who has entered into a contract under Section 961.301.

(4) "Nonprofit legal services corporation" means a corporation created for the sole purpose of establishing, maintaining, and operating a nonprofit legal services plan under which the corporation contracts for and obtains legal services for participants through contracting attorneys in consideration of each participant's payment of a definite amount to fund the payment of the contracting attorneys' fees.

(5) "Participant" means a person entitled to performance of legal services under contract with a nonprofit legal services corporation. (V.T.I.C. Art. 23.01, Secs. (a) (part), (b)(2), (3), (4), (5); Art. 23.10 (part).)

Source Law

Art. 23.01. (a) . . . a corporation may be incorporated for the sole purpose of establishing, maintaining, and operating non-profit legal service plans, whereby legal services may be provided by such corporation through contracting attorneys as is hereinafter provided.

(b) As used in this chapter, the following words, unless the context of their use clearly indicates otherwise, shall have the following meanings:

. . .

(2) "Applicant" means a person applying for a legal services contract for performance of legal services through a corporation qualified under this chapter.

(3) "Benefit certificate" means a

writing setting forth the benefits and other required matters issued to a participant under a group contract for legal services and also an individual contract for legal services issued to a participant.

(4) "Contracting attorney" means an attorney who has entered into the contract provided by Article 23.11 of this code.

(5) "Participant" means the person entitled to performance of legal services under contract with a corporation qualified under this chapter.

Art. 23.10. [The corporations complying with the requirements of this chapter shall be governed and conducted as non-profit organizations] for the purpose of contracting for and obtaining legal services for their participants through contracting attorneys, in consideration of the payment by the participants of a definite sum to fund the payment of attorneys fees for the legal services to be furnished by the contracting attorneys. . . .

Revisor's Note

(1) Section (b), V.T.I.C. Article 23.01, provides that the defined terms have the meanings provided "unless the context of their use clearly indicates otherwise." The revised law omits the quoted language as unnecessary because the defined terms are used consistently in this revision.

(2) Section (b)(6), V.T.I.C. Article 23.01, defines "State Board of Insurance" and includes a substantive provision allowing that board to delegate its duties to the "proper insurance regulatory official." The revised law omits the definition because Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of

Insurance, respectively. Throughout this chapter, references to the State Board of Insurance have been changed appropriately. The revised law omits the provision relating to delegation of duties to the "proper insurance regulatory official" because the duties to which the provision applies are now assigned to the commissioner of insurance, who is the only insurance regulatory official in the state. The omitted law reads:

(6) "State Board of Insurance" means all of the insurance regulatory officials whose duties and functions are designated by the Insurance Code of Texas as such now exists or may be amended in the future. Any duty stated by this chapter to be performed by or to be placed on the State Board of Insurance is placed upon and is to be performed by the insurance regulatory official or group of officials on whom similar duties are placed or to be performed for insurers or the business of insurance by the Insurance Code. The multimember insurance regulatory body designated by the Insurance Code as the uniform insurance rule-making authority is authorized to enact rules designating the proper insurance regulatory official to perform any duty placed by this chapter on the insurance regulatory officials where such duty is not similar to duties otherwise performed by a specific official or group of such officials.

(3) The definition of "nonprofit legal services corporation" is derived from V.T.I.C. Articles 23.01(a) and 23.10 and is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 961.002. APPLICABILITY OF OTHER LAWS. (a) The Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., Vernon's Texas Civil Statutes) and the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) apply to a nonprofit legal services corporation to the extent not in conflict with this chapter.

(b) The following provisions of this code apply to a nonprofit legal services corporation in the same manner that they apply to an insurer or a person engaged in the business of insurance, to the extent the provisions do not conflict with this chapter:

(1) Articles 1.01, 1.09-1, 1.11, 1.12, 1.13, 1.15, 1.15A, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 21.21, 21.21-2, 21.28, 21.28-A, 21.47, and 21.49-8;

(2) Sections 2, 6, and 17, Article 1.10;

(3) Sections 31.002, 31.004, 31.007, 31.021, 31.022, 31.023, 31.025, 31.026, 31.027, 32.001, 32.002, 32.003, 32.021, 32.022(a), 32.023, 32.041, 33.002, 33.006, 38.001, 81.004, 801.001, 801.002, 801.051-801.055, 801.057, 801.101, 801.102, 802.003, 841.251, and 841.252;

(4) Subchapter B, Chapter 31;

(5) Subchapter D, Chapter 36;

(6) Subchapter A, Chapter 805; and

(7) Chapter 824. (V.T.I.C. Art. 23.26.)

Source Law

Art. 23.26. (a) Corporations complying with this chapter shall be subject to and are required to comply with the provisions of the Texas Miscellaneous Corporation Laws Act and the Texas Non-Profit Corporation Act as those laws now exist or may be amended in the future to the extent the provisions of this chapter are not in conflict therewith.

(b) The following provisions of the Insurance Code as they now exist or shall hereafter be amended shall, where not in conflict with this chapter, apply to corporations complying with the provisions of this chapter to the same extent as they apply to insurers and to those doing the business of insurance: Articles 1.01, 1.02, 1.04, 1.09, 1.09-1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.15A, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.29, 3.12, 3.13, 21.21, 21.21-2, 21.25, 21.28, 21.28-A, 21.47, 21.49-8 and Sections 1, 2, 6, 8, 9, 10, 11, 12, 13, 14, and 17 of Article 1.10 of this code.

Revisor's Note

(1) V.T.I.C. Article 23.26 refers to certain corporation laws "as those laws now exist or may be amended in the future" and to certain provisions of the Insurance Code "as

they now exist or shall hereafter be amended." The revised law omits the quoted language because under Section 311.027, Government Code (Code Construction Act), applicable to the revised law, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

(2) V.T.I.C. Article 23.26 and numerous other provisions of the law revised by this chapter refer to "corporations complying with the provisions of this chapter." Throughout this chapter, the revised law substitutes "nonprofit legal services corporation" for the quoted language. From the context of the repeated use of the quoted language, it is clear that the phrase was meant merely to refer to a corporation created under and subject to the law revised by this chapter rather than to repeatedly establish a requirement that such a corporation comply with that law. Moreover, it is implicit in the nature of any statute that an entity subject to the statute must comply with the statute, and an express statement to that effect is unnecessary.

(3) V.T.I.C. Article 23.26 provides that Article 1.23, Insurance Code, applies to nonprofit legal services corporations. The revised law omits the reference to Article 1.23 because that article was repealed by Section 5, Chapter 101, Acts of the 76th Legislature, Regular Session, 1999, and was omitted from Title 2 of this code as unnecessary, as stated in the revisor's note to the end of Subchapter A, Chapter 32.

Revised Law

Sec. 961.003. CORPORATION SUBJECT TO DEPARTMENT REGULATION. Each nonprofit legal services corporation is subject to this chapter and to direct supervision by the department. (V.T.I.C. Arts. 23.02 (part), 23.09 (part).)

Source Law

Art. 23.02. All corporations organized under the provisions of this chapter shall be under the direct supervision of the State Board of Insurance, and . . . .

Art. 23.09. . . . Such corporation

shall be governed by this chapter and . . . .

Revised Law

Sec. 961.004. CORPORATION NOT ENGAGED IN BUSINESS OF INSURANCE. A nonprofit legal services corporation that complies with this chapter is not engaged in the business of insurance and, except as provided by Section 961.002(b), is not subject to laws relating to insurers. (V.T.I.C. Art. 23.09 (part).)

Source Law

Art. 23.09. . . . Such corporation . . . shall not be construed as being engaged in the business of insurance nor subject to laws respecting insurers so long as it complies with the provisions of this chapter. . . .

Revisor's Note

(1) V.T.I.C. Article 23.09 provides that a nonprofit legal services corporation "shall not be . . . subject to laws respecting insurers." Section (b), V.T.I.C. Article 23.26, revised as Section 961.002(b), lists a number of provisions of the Insurance Code that apply to a nonprofit legal services corporation. Accordingly, the revised law includes a reference to Section 961.002(b).

(2) V.T.I.C. Article 23.09 provides that the article does not declare the issuance of contracts for prepaid legal services by entities other than nonprofit legal services corporations not to be the business of insurance. The revised law omits that provision as self-evident and unnecessary. Nothing in the law revised by this chapter or in this revision makes such a declaration. The omitted law reads:

Art. 23.09. . . . The provisions of this article shall not be deemed to declare the issuance of contracts for prepaid legal services when done by those entities other than corporations complying with this chapter not to be the business of insurance. . . .

[Sections 961.005-961.050 reserved for expansion]

SUBCHAPTER B. FORMATION AND STRUCTURE OF NONPROFIT LEGAL SERVICES CORPORATIONS

Revised Law

Sec. 961.051. APPLICATION FOR CORPORATE CHARTER; NONPROFIT STATUS REQUIRED. (a) Seven or more persons may apply to the secretary of state for a corporate charter under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) for a nonprofit legal services corporation.

(b) A nonprofit legal services corporation must be governed and operated as a nonprofit organization. (V.T.I.C. Art. 23.01, Sec. (a) (part); Art. 23.10 (part).)

Source Law

Art. 23.01. (a) On application of any seven or more persons to the secretary of state for a corporate charter under the Texas Non-Profit Corporation Act a corporation may be incorporated [for the sole purpose of establishing, maintaining, and operating non-profit legal service plans, whereby legal services may be provided by such corporation through contracting attorneys as is hereinafter provided].

Art. 23.10. The corporations complying with the requirements of this chapter shall be governed and conducted as non-profit organizations . . . .

Revised Law

Sec. 961.052. MINIMUM PARTICIPATION REQUIREMENTS. (a) After incorporation and before engaging in business other than seeking applicants and obtaining contracting attorneys, a nonprofit legal services corporation must collect in advance an application fee and at least one month's payment for services from the lesser of:

(1) 200 applicants; or

(2) the number of applicants that the department determines is necessary for a workable legal services plan.

(b) The nonprofit legal services corporation shall keep the money collected under Subsection (a) in a trust account in a bank in this state until the corporation is issued a certificate of authority under this chapter. The corporation shall refund the money in full if the corporation is not issued a certificate of authority.

(c) As a condition of continued operation, a nonprofit legal services corporation must maintain at least the lesser of:

(1) 200 participants; or

(2) the necessary number of applicants determined by the department under Subsection (a)(2). (V.T.I.C. Art. 23.02 (part).)

Source Law

Art. 23.02. [All corporations organized under the provisions of this chapter] . . . shall be subject to the following requirements:

(1) After incorporation, but as a condition of doing business other than seeking applicants and obtaining contracting attorneys, they shall have collected in advance from at least 200 applicants (unless a lesser number of applicants is found by the State Board of Insurance to be a large enough number of applicants to constitute a workable prepaid legal service plan) the application fee and at least one month's payment for services. Such funds shall, at all times prior to issuance by the State Board of Insurance of its certificate of authority as below provided, be maintained in a trust account in a bank in Texas and shall be refunded in full should such certificate of authority not be issued. It shall thereinafter be a condition of continued operation that a minimum number of 200 participants or lesser number previously approved by the State Board of Insurance be maintained.

Revisor's Note

V.T.I.C. Chapter 23, in connection with services and plans governed by that chapter, refers interchangeably to "prepaid legal services" and "legal services." The context in which the terms are used makes it clear that all references to legal services mean prepaid legal services. For consistency, throughout this chapter the revised law omits "prepaid" from references to legal services.

[Sections 961.053-961.100 reserved for expansion]

SUBCHAPTER C. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 961.101. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The department shall issue a certificate of authority to a nonprofit legal services corporation to engage in business if the corporation:

(1) files a statement acceptable to the department showing that the corporation is solvent; and

(2) complies with this chapter.

(b) A certificate of authority is valid until revoked for noncompliance with law, by operation of law, or as provided by this chapter. (V.T.I.C. Art. 23.02 (part).)

Source Law

Art. 23.02. [All corporations organized under the provisions of this chapter] . . . shall be subject to the following requirements:

. . .

(4) If any such corporation files an acceptable statement showing solvency, and otherwise complies with this chapter, the State Board of Insurance shall issue it a certificate of authority authorizing it to transact business until such certificate shall be revoked for noncompliance with law, by operation of law or as provided by this chapter.

Revised Law

Sec. 961.102. REVOCATION OF CERTIFICATE OF AUTHORITY. (a) After a hearing, the commissioner shall revoke the certificate of authority of a nonprofit legal services corporation if:

(1) the commissioner determines the corporation is:

(A) operating fraudulently; or

(B) not complying with this chapter; or

(2) the corporation does not pay valid claims in accordance with this chapter.

(b) A hearing under Subsection (a) may be held only on the basis of written specifications and not earlier than the 21st day after the date notice of the hearing is given. (V.T.I.C. Art. 23.05 (part).)

Source Law

Art. 23.05. . . . The State Board of Insurance after public hearing on written specifications after 20 days notice shall cancel the certificate of authority of any such corporation found to be not in compliance with this chapter, operating fraudulently, or which fails to pay its valid claims in accordance with the provisions of this article.

Revisor's Note

V.T.I.C. Article 23.05 requires the commissioner to "cancel" a certificate of authority. The revised law substitutes "revoke" for "cancel" for consistency with the term used in V.T.I.C. Article 23.02, revised in pertinent part as Section 961.101 of this code.

[Sections 961.103-961.150 reserved for expansion]

SUBCHAPTER D. BOARD OF DIRECTORS; PERSONNEL

Revised Law

Sec. 961.151. COMPENSATION OF DIRECTORS. A director of a nonprofit legal services corporation may not receive salary or other compensation for the director's services but may receive reimbursement for reasonable and necessary expenses incurred in attending a meeting called to manage or direct the affairs of the corporation. (V.T.I.C. Art. 23.20.)

Source Law

Art. 23.20. No director of any corporation created under this chapter shall receive any salary, wages, or compensation for his services, but shall be allowed reasonable and necessary expenses incurred in attending any meeting called for the purpose of managing or directing the affairs of the corporation.

Revisor's Note

V.T.I.C. Article 23.20 refers to the "salary, wages, or compensation" of a director. The revised law omits "wages" because, in context, that term is included in the meaning of "salary or other compensation."

Revised Law

Sec. 961.152. FINANCIAL OFFICER; BOND. (a) A nonprofit legal services corporation, by resolution entered in its minutes, shall designate one or more officers to be responsible for handling the corporation's funds. The president, secretary, or general manager of the corporation must certify a copy of the resolution, and the corporation shall file the copy with the department.

(b) Except as provided by Subsection (c), the corporation shall make and file a separate or blanket surety bond covering each officer designated under Subsection (a). The bond must:

(1) be issued by a corporate surety company authorized to issue surety bonds in this state;

(2) be satisfactory to the department and payable to the department for the use and benefit of the corporation;

(3) obligate the principal and surety to pay any monetary loss to the corporation through an act of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication by a covered officer, whether acting alone or with other persons, while employed as or exercising the powers of an officer designated under Subsection (a); and

(4) be in an amount of at least $25,000 for each officer covered.

(c) Instead of the bond required by Subsection (b), an officer designated under Subsection (a) may deposit with the department cash or securities approved by the department in the amount and subject to the conditions applicable to the bond.

(d) Successive recoveries may be made on a bond under this section until the amount of the bond is exhausted. (V.T.I.C. Art. 23.04 (part).)

<u>Source Law</u>

Art. 23.04. Each corporation complying with the requirements of this chapter shall, by resolution adopted and entered on its minute book, a copy of which properly certified to by the president, secretary, or general manager shall be filed with the State Board of Insurance, designate some officer or officers who shall be responsible in the handling of the funds of the corporation. Said corporation shall make and file for each such officer a surety bond or blanket bond covering all such officers with a corporate surety company authorized to write surety bonds in this state, as surety, satisfactory and payable to the State Board of Insurance in the sum of not less than $25,000 for each officer for the use and benefit of said corporation, which said bond shall obligate the principal and surety to pay such pecuniary loss as the corporation shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of each such officer, either directly and alone or in connivance with others, while employed as such an officer or exercising

powers of such office. In lieu of such bond any such officer may deposit with the State Board of Insurance cash (or securities approved by the State Board of Insurance) which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond. . . . Successive recoveries on any of the bonds provided from this article may be had on such bonds until same are exhausted.

Revisor's Note

V.T.I.C. Article 23.04 refers to "dishonesty," "theft," "embezzlement," and "wrongful abstraction." The revised law omits "wrongful abstraction" because that term is included in the meaning of "dishonesty," "theft," and "embezzlement."

Revised Law

Sec. 961.153. BOND REQUIREMENTS FOR CERTAIN PERSONS. (a) In addition to the bond required by Section 961.152, a nonprofit legal services corporation shall obtain a separate or blanket surety bond covering each other person who may have access to the corporation's funds. The bond must:

(1) be issued by a surety authorized by the department to do business in this state;

(2) be satisfactory to the department and payable to the department for the use and benefit of the corporation;

(3) obligate the principal and surety to pay any monetary loss to the corporation through an act of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication by a covered person, whether acting alone or with other persons; and

(4) be in an amount determined by the department of at least $1,000 but not more than $10,000 for each person covered.

(b) Successive recoveries may be made on a bond under this section until the amount of the bond is exhausted. (V.T.I.C. Art. 23.04 (part).)

Source Law

Art. 23.04. . . .

In addition to the bond required in the preceding paragraph, each corporation shall procure for all other office employees, or other persons who may have access to any of its funds, separate bonds or blanket bonds with some surety licensed by the State Board of Insurance to do business in Texas, in an amount or amounts fixed by the State Board of Insurance with a minimum of $1,000 and a maximum of $10,000 for each employee, satisfactory and payable to the State Board of Insurance for the use and benefit of the corporation obligating the principal and surety to pay each pecuniary loss as the corporation shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such persons, either directly and alone, or in connivance with others. Successive recoveries on any of the bonds provided from this article may be had on such bonds until same are exhausted.

Revisor's Note

(1) V.T.I.C. Article 23.04 refers to "dishonesty," "theft," "embezzlement," and "wrongful abstraction." The revised law omits "wrongful abstraction" for the reason stated in the revisor's note to Section 961.152.

(2) V.T.I.C. Article 23.04 refers to a "licensed" surety. The revised law substitutes "authorized" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

[Sections 961.154-961.200 reserved for expansion]

SUBCHAPTER E. REGULATION OF NONPROFIT LEGAL SERVICES CORPORATIONS

Revised Law

Sec. 961.201. PLAN OF OPERATION; EXPENSE FUND BALANCE. (a) Before accepting applications for participation in a legal services plan, a nonprofit legal services corporation must:

(1) have sufficient money in its expense fund described by Section 961.203 to cover initial operations; and

(2) submit to the department:

(A) a plan of operation;

(B) a rate schedule of its charges to participants; and

(C) a schedule and projections of costs of legal services to be contracted for on behalf of participants.

(b) Before the corporation may engage in business, the department must approve as adequate, fair, and reasonable:

(1) the plan of operation; and

(2) the sufficiency of the money in the expense fund.

(c) The department has continuing control over the corporation's plan of operation. A change in the plan must be filed with and approved by the department before the change takes effect.

(d) The department may not set maximum rates or premiums that may be charged under a legal services plan under this chapter. (V.T.I.C. Art. 23.14.)

Source Law

Art. 23.14. (a) Every corporation complying with the requirements of this chapter shall, before accepting applications for participation in said non-profit legal service plan, have sufficient money in its expense fund to cover initial operations and shall submit to the State Board of Insurance a plan of operation together with a rate schedule of its charges to participants and a schedule and projections of costs of legal services to be contracted for on behalf of the participants; which plan and the sufficiency of expense fund shall first be approved by the State Board of Insurance as adequate, fair, and reasonable before such corporation shall engage in business. The State Board of Insurance shall have continuing control over the plan of operation of such corporation. No change in such plan shall be effectuated without its first being filed and approved by the State Board of Insurance.

(b) The State Board of Insurance may not determine, fix, prescribe, set, or promulgate maximum rates or maximum amounts of premium to be charged for a non-profit legal services plan under this chapter.

Revisor's Note

V.T.I.C. Article 23.14 provides that state insurance regulatory officials may not "determine, fix, prescribe, set, or promulgate" certain rates or amounts. The revised law omits "determine," "fix," "prescribe," and "promulgate" because those terms are included in the meaning of "set."

Revised Law

Sec. 961.202. ANNUAL STATEMENT. (a) Not later than March 1 of each year, each nonprofit legal services corporation shall file with the department an annual statement that covers the corporation's operations for the preceding calendar year.

(b) The statement must be in the form prescribed by and provide the information required by the department. (V.T.I.C. Art. 23.02 (part).)

Source Law

> Art. 23.02. [All corporations organized under the provisions of this chapter] . . . shall be subject to the following requirements:
>
> . . .
>
> (2) They shall file a statement of their operations for the year ending December 31 each year, said statement to reach the State Board of Insurance not later than March 1 of the succeeding year. The statements shall be on such forms and shall reveal such information as shall be required by the State Board of Insurance.

Revised Law

Sec. 961.203. CLAIM FUND; EXPENSE FUND. (a) A nonprofit legal services corporation shall maintain a claim fund and an expense fund.

(b) The claim fund is composed of:

(1) application fees; and

(2) at least 70 percent of the regular payments by participants, except the department may adjust this percentage on a showing that the adjustment:

(A) is in the best interest of the persons receiving legal services under the contract at the time of the adjustment; or

(B) is necessary for the corporation's development during its first year of existence.

(c) Money in the claim fund must be maintained as cash or in demand deposits or invested in:

(1) certificates of deposit, share accounts, and time deposits in a public bank or savings and loan association the deposits of which are insured by a federal government agency; or

(2) obligations of a state or the federal government.

(d) Money in the expense fund may be invested only in legal investments for the capital, surplus, and contingency funds of a stock life insurance company.

(e) Net income from an investment of money in a fund accrues to that fund.

(f) Money in the claim fund may be disbursed only to pay:

(1) a valid claim;

(2) the cost of settling a contested claim;

(3) tax on the fund's income;

(4) a refund of a fee deposited in the fund;

(5) an expense directly incurred on or for preservation of an investment of the fund, including the cost of transferring a security; or

(6) an amount as provided by a contract under Section 961.207. (V.T.I.C. Art. 23.10 (part).)

Source Law

Art. 23.10. . . . Provided further, that each such corporation shall have two funds, namely: the claim fund and the expense fund. The claim fund shall be composed of at least 70 percent of the regular payments by participants, and the application fees. The percentage amounts above stated may be modified by the State Board of Insurance upon showing that such is in the best interest of the then existing persons receiving legal services under contract or that such is necessary for the development of the corporation during its first year of existence. . . . Claim fund investments may include, besides lawful money and demand deposits, only certificates of deposits, share accounts, and time deposits in public banks and savings and loan institutions whose deposits are insured by a federal governmental agency, and obligations of a state or the federal government; and the expense fund investments may include only such as are legal investments for the capital, surplus, and contingency funds of capital stock life insurance companies. The net income from the investments shall accrue to the funds, respectively, from which the investments were made. The claim fund shall be disbursed only for the payment of valid claims, taxes on income of such fund, security transfer costs, refunds of fees paid into such fund, cost of settling contested claims, expenses directly incurred on or for preservation of investments of the claim fund, and contracts authorized under Article 23.19 of this code.

Revisor's Note

V.T.I.C. Article 23.10 refers to "capital stock life insurance companies." The revised law omits "capital" for consistency with the terminology used in this code.

Revised Law

Sec. 961.204. DEPOSIT REQUIREMENTS. A nonprofit legal services corporation shall deposit money collected from applicants or participants in an account of the corporation in a public bank. The bank must be a state depository, and its deposits must be protected by the Federal Deposit Insurance Corporation. (V.T.I.C. Art. 23.17.)

Source Law

Art. 23.17. All funds collected from applicants and participants of a corporation complying with this chapter shall be deposited to the account of the corporation in a public bank, which is a state depository having Federal Deposit Insurance Corporation protection of its deposits.

Revised Law

Sec. 961.205. SOLVENCY OF FUNDS. As a condition of holding a certificate of authority under this chapter, a nonprofit legal services corporation shall maintain the solvency of each fund so that the admitted assets of the fund exceed the fund's liabilities, other than claim liabilities guaranteed under Section 961.302. (V.T.I.C. Art. 23.02 (part).)

Source Law

Art. 23.02. [All corporations organized under the provisions of this chapter] . . . shall be subject to the following requirements:

. . .

(3) They shall maintain solvency in each of its funds, i. e., the admitted assets of each such fund shall exceed its liabilities (except for claim liability covered by attorney guarantees provided by Article 23.15 of this code), and it shall be a continuing condition of licensing by the State Board of Insurance that such solvency be maintained.

Revised Law

Sec. 961.206. ADVANCE TO CORPORATION. Any person may advance to a nonprofit legal services corporation, on a contingent liability basis, money necessary for the purposes of the corporation's business or to comply with this chapter, except that the advance may be repaid only on prior approval of the department. The advance may be made in an amount and at a rate of interest agreed to by the person and the corporation. (V.T.I.C. Art. 23.13.)

Source Law

Art. 23.13. Any person may advance to the corporation on contingent liability basis such funds as are necessary for the purposes of its business or to enable it to comply with any requirements of this chapter and such money and interest thereon as may have been agreed upon shall be repayable and shall be repaid only on prior approval of the State Board of Insurance.

Revised Law

Sec. 961.207. PARTICIPATION AGREEMENTS. (a) Subject to Subsection (b), a nonprofit legal services corporation may:

(1) contract with another nonprofit legal services corporation or an insurer authorized to engage in business in this state for joint participation through:

(A) a mutualization contract agreement; or

(B) a guaranty treaty; and

(2) cede or accept a legal services obligation from such a corporation or insurer on all or part of a legal services obligation.

(b) Each document used for a purpose described by Subsection (a) must be filed with the department and approved by the department to be in accordance with the corporation's plan of operation before the document takes effect.

(c) To carry out the purposes of this section, the commissioner may adopt rules governing an agreement with an insurer under Subsection (a). (V.T.I.C. Art. 23.19.)

Source Law

Art. 23.19. Corporations complying with the requirements of this chapter shall be authorized to contract with other organizations complying with this chapter and insurers licensed to do business in Texas for joint participation through mutualization contract agreements or guaranty treaties or otherwise cede or accept legal services obligations from such companies on the whole or any part of such legal service obligations, provided that such contract forms, documents, treaties, or agreement forms are filed with and approved by the State Board of Insurance to be in accordance with the plan of operation of the corporation prior to their effectiveness.

The State Board of Insurance shall be authorized to issue rules and regulations concerning such participation contracts and agreements with insurers as provided by this article in accordance with and in carrying out its purposes.

Revisor's Note

(1) V.T.I.C. Article 23.19 refers to insurers "licensed to do business in" this state. The revised law substitutes "authorized" for "licensed" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

(2) V.T.I.C. Article 23.19 refers to "contract forms, documents, treaties, or agreement forms." The revised law omits "contract forms," "treaties," and "agreement forms" because, in context, those terms are included in the meaning of "document."

(3) V.T.I.C. Article 23.19 refers to "rules and regulations." Throughout this chapter, references to "regulations" are omitted from the revised law because under Section 311.005, Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law

Sec. 961.208. EXCLUSIVE AGENCY CONTRACT OR MANAGEMENT CONTRACT. (a) A nonprofit legal services corporation may not enter into an exclusive agency contract or management contract unless the contract has been approved by the department.

(b) Before entering into a contract governed by Subsection (a), the corporation shall file the proposed contract with the department. The department shall approve or disapprove the proposed contract not later than the 30th day after the filing date, except that the department may extend that period by a reasonable time by giving notice not later than the 30th day after the filing date.

(c) The department shall disapprove the proposed contract if the department determines that:

(1) the contract:

(A) subjects the corporation to excessive charges;

(B) lasts for an unreasonable period;

(C) does not contain fair and adequate standards of performance; or

(D) impairs the interests of the public in this state or the corporation's participants or creditors; or

(2) the persons given the power under the contract to manage the corporation are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the corporation, with due regard for the interest of the public and the corporation's participants and creditors. (V.T.I.C. Art. 23.25.)

Source Law

Art. 23.25. (a) No corporation complying with the requirements of this chapter may enter into an exclusive agency contract or management contract, unless the contract is first filed with the State Board of Insurance and approved under this article within 30 days after filing or such reasonable extended period as the State Board of Insurance may specify by notice given within the 30 days.

(b) The State Board of Insurance shall disapprove a contract submitted under Section (a) of this article if it finds that:

(1) it subjects the corporation to excessive charges;

(2) the contract extends for an unreasonable period of time;

(3) the contract does not contain fair and adequate standards of performance;

(4) the persons empowered under the contract to manage the corporation are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the corporation with due regard for the interest of its participants, creditors, or the public; or

(5) the contract contains provisions which impair the interests of the corporation's participants, creditors, or the public in this state.

Revised Law

Sec. 961.209. REMEDIES FOR CORPORATION IN HAZARDOUS FINANCIAL CONDITION. (a) If the commissioner determines that a nonprofit legal services corporation's financial condition is such that the continued operation of the corporation may be hazardous to the public or the corporation's participants or creditors, the commissioner, after notice and hearing, may order the corporation to take any action reasonably necessary to correct the condition, including:

(1) reducing:

(A) the amount of present and potential liability for benefits through agreements under Section 961.207;

(B) the volume of new business that the corporation accepts; or

(C) expenses through specified methods; or

(2) suspending or limiting the writing of new business for a period.

(b) If no remedy under Subsection (a) is effective and the commissioner determines that the hazardous condition is a shortage of money in the corporation's expense fund, the commissioner, after further notice and hearing, may order the corporation to deposit in the expense fund an additional amount of money sufficient to cure the hazardous condition. The commissioner may not require a corporation to maintain money in the expense fund in excess of the amount required by Section 961.205. (V.T.I.C. Art. 23.24, Sec. (a).)

Source Law

Art. 23.24. (a) Whenever the financial condition of any corporation complying with the requirements of this chapter indicates a condition such that the continued operation of such corporation might be hazardous to its participants, creditors, or the general public, then the State Board of Insurance may, after notice and hearing, order such corporation to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(1) to reduce the total amount of present and potential liability for benefits by use of Article 23.19 of this code;

(2) to reduce the volume of new business being accepted;

(3) to reduce expenses by specified methods; or

(4) to suspend or limit the writing of new business for a period of time.

Where none of the foregoing remedies is effective and the hazardous condition is determined to be a shortage of money in the expense fund the State Board of Insurance may after further notice and hearing order funds sufficient to cure the hazardous condition to be placed in the expense fund. The State Board of Insurance shall not have authority hereby to require the maintenance of money in the expense fund except as provided by Article 23.02(3) of this code.

Revisor's Note

Section (a), V.T.I.C. Article 23.24, provides remedies for curing a hazardous financial condition, including "but not necessarily limited to" certain listed remedies. The revised law omits the quoted language because Section 311.005, Government Code (Code Construction Act), applicable to the revised law, provides that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded.

Revised Law

Sec. 961.210. RULES RELATING TO HAZARDOUS FINANCIAL CONDITION. (a) The commissioner by rule may establish:

(1) uniform standards and criteria for early warning that the continued operation of a nonprofit legal services corporation may be hazardous to the public or the corporation's participants or creditors; and

(2) standards for evaluating the financial condition of a nonprofit legal services corporation.

(b) A standard established under this section must be consistent with the purposes of this section and Section 961.209. (V.T.I.C. Art. 23.24, Sec. (b).)

Source Law

(b) The State Board of Insurance is authorized, by rule and regulations, to fix uniform standards and criteria for early warning that the continued operation of any company might be hazardous to its participants, creditors, or the general public, and to fix standards for evaluating the financial condition of any corporation complying with the requirement of this chapter, which standards shall be consistent with the purposes expressed in this article.

Revised Law

Sec. 961.211. BOOKS AND RECORDS. (a) A nonprofit legal services corporation shall keep complete books and records of all money collected and disbursed.

(b) The department may examine books and records under this section at the corporation's expense. (V.T.I.C. Art. 23.21.)

Source Law

Art. 23.21. Every corporation complying with this chapter shall keep complete books and records, showing all funds collected and disbursed, and all books and records shall be subject to examination by the State Board of Insurance, the expense of such examination to be borne by said corporation.

Revised Law

Sec. 961.212. FEES. (a) The commissioner shall charge each of the following fees in an amount prescribed by the commissioner not to exceed:

(1) $400 for filing an annual operating statement;

(2) $3,000 for filing an application for a certificate of authority, including the fee for issuance of the certificate of authority; and

(3) $100 for issuance of each additional certificate of authority and amendment of a certificate of authority.

(b) The comptroller shall collect the annual operating statement filing fee. (V.T.I.C. Art. 23.08.)

Source Law

Art. 23.08. The commissioner shall charge a fee determined by the commissioner in an amount not to exceed $400 for filing the annual statement of each corporation operating under this chapter; an application fee determined by the commissioner in an amount not to exceed $3,000 for each corporation applying under this chapter which includes the fee for the issuance of a certificate of authority; and a fee determined by the commissioner in an amount not to exceed $100 for the issuance of each additional certificate of authority and amendment of a certificate of authority to the corporation. The commissioner shall, within the limits fixed by this article, prescribe the fees to be charged under this article. The comptroller shall collect the annual statement filing fee.

[Sections 961.213-961.250 reserved for expansion]

SUBCHAPTER F. BENEFITS PROVIDED BY NONPROFIT LEGAL SERVICES CORPORATIONS

Revised Law

Sec. 961.251. APPLICANTS; BENEFIT CERTIFICATE. (a) A nonprofit legal services corporation may accept applicants and shall issue a benefit certificate to each applicant that becomes a participant under a legal services contract. Before issuance of the certificate, the applicant must pay the application fee, which does not apply as part of the cost of receiving benefits under the certificate.

(b) On issuance of the benefit certificate, the participant is entitled to the legal services stated in the certificate for the period provided by the certificate. (V.T.I.C. Arts. 23.09 (part), 23.10 (part), 23.16 (part).)

Source Law

Art. 23.09. Any corporation complying with the requirements of this chapter shall be authorized to accept applicants, who upon issuance of a benefit certificate shall be entitled to legal services for such period of time as is provided therein. . . .

Art. 23.10. . . . The application fees shall be paid by applicants prior to issuance of a benefit certificate, and shall not apply as a part of the cost of receiving benefits under the benefit certificate issued. . . .

Art. 23.16. Every corporation shall issue to its applicants that are covered by a contract for prepaid legal services benefit certificates setting forth the benefits to which they are or may become entitled. . . .

Revisor's Note

V.T.I.C. Article 23.16 provides that a legal services corporation shall issue benefit certificates to applicants "setting forth the benefits to which they are or may become entitled." The revised law omits the quoted language because the substance of that language is included in the definition of "benefit certificate" provided by Section 961.001.

Revised Law

Sec. 961.252. APPROVAL OF FORMS. A benefit certificate, application form, or contract between a nonprofit legal services corporation and a participant's employer or group representative must be in a form approved by the department before issuance. The department may adopt rules relating to those forms to provide that they properly describe applicable benefits and are not unjust, misleading, or deceptive. (V.T.I.C. Art. 23.16 (part).)

Source Law

Art. 23.16. . . . Such certificates, application forms, and contracts made between the corporation and the participants' employer or group representative shall be in form approved by the State Board of Insurance prior to issuance. The State Board of Insurance shall be authorized to issue rules and regulations concerning such forms to provide that they shall properly describe their benefits and not be unjust, misleading, or deceptive.

Revised Law

Sec. 961.253. TYPES OF LEGAL SERVICES CONTRACTS. A nonprofit legal services corporation may issue legal services contracts on an individual, group, or franchise basis. (V.T.I.C. Art. 23.09 (part).)

Source Law

Art. 23.09. . . . The right of corporations complying with the requirements of this chapter to issue prepaid legal services contracts on individual, group, and franchise bases is recognized.

Revised Law

Sec. 961.254. INDEMNITY CONTRACTS. (a) A nonprofit legal services corporation may issue a contract for legal services, as provided by rules adopted by the commissioner, providing for indemnity for costs of services of an attorney who is not a contracting attorney if the department is satisfied that the corporation's plan of operation, experience, and financial standing, including a proper amount of unencumbered surplus, are adequate to ensure performance of the contract.

(b) A contract under Subsection (a) may be issued without the guarantee provided by Section 961.302(1). (V.T.I.C. Art. 23.15 (part).)

Source Law

Art. 23.15. . . . Such corporations may issue prepaid legal service contracts without such guarantees and providing for indemnity for costs of attorney services where the attorney is not a contracting attorney under such rules and regulations as may be approved by the State Board of Insurance provided that the State Board of Insurance be satisfied that the plan of operation, financial standing and experience of the corporation (including but not limited to a proper amount of free surplus) is adequate to assure the performance of such contracts.

Revisor's Note

V.T.I.C. Article 23.15 provides that the commissioner of insurance must be satisfied with a legal services corporation's financial standing, including "but not limited to" a proper amount of "free surplus." The revised law omits "but not limited to" for the reason stated in the revisor's note to Section 961.209. The revised law substitutes "unencumbered surplus" for "free surplus" because, in context, the phrases are synonymous and the phrase "unencumbered surplus" is more consistent with modern usage.

Revised Law

Sec. 961.255. LIMITATIONS ON BENEFITS. A contract for legal services and a benefit certificate issued by a nonprofit legal services corporation may limit:

(1) the types and extent of benefits; and

(2) the circumstances under which legal services are provided. (V.T.I.C. Art. 23.11 (part).)

Source Law

Art. 23.11. . . . with the right to the corporation to limit in the prepaid legal service contract and benefit certificate the types and extent of benefits and the circumstances for which such legal services shall be furnished.

Revised Law

Sec. 961.256. CLAIMS. (a) A nonprofit legal services corporation shall pay a lawful claim for payment under a benefit certificate not later than the 120th day after the date of receipt of due proof of claim.

(b) Written notice of a claim given to the corporation is considered due proof of claim under this section if the corporation does not provide to the claimant before the 16th day after the date notice is received the forms usually provided by the corporation for filing a claim. (V.T.I.C. Art. 23.05 (part).)

Source Law

> Art. 23.05. All lawful claims for payment based upon certificates issued to participants shall be paid within 120 days after receipt of due proof of claim. Written notice of claim given to a corporation complying with the requirements of this chapter shall be deemed due proof in the event the corporation fails, upon receipt of notice, to furnish the participant making claim within 15 days such forms as are usually furnished by it for filing such claims. . . .

[Sections 961.257-961.300 reserved for expansion]

SUBCHAPTER G. CONTRACTS WITH ATTORNEYS

Revised Law

Sec. 961.301. CONTRACTS WITH ATTORNEYS. (a) A nonprofit legal services corporation may contract with attorneys as provided by this chapter to ensure to each participant legal services performed by the attorneys under the contract for legal services between the corporation and the participant. A contracting attorney must be licensed to practice law in the jurisdiction in which legal services are to be provided.

(b) Before issuing a contract for legal services and while the corporation continues to issue those contracts, the corporation must maintain the number of contracting attorneys that the department determines is necessary to service the participant contracts contemplated by the corporation's plan of operation. (V.T.I.C. Art. 23.01, Sec. (b)(1); Art. 23.03; Art. 23.11 (part).)

Source Law

> [Art. 23.01]
>
> (b) [As used in this chapter, the following words . . . shall have the following meanings:]

(1) "Attorney" means a person licensed to practice law in the jurisdiction in which the legal services are to be provided.

Art. 23.03. Each corporation complying with the requirements of this chapter before issuing any contract for prepaid legal services shall have and so long as it issues such contracts maintain such number of contracting attorneys as is sufficient in the determination of the State Board of Insurance to service the participant contracts contemplated by the corporation's plan of operation.

Art. 23.11. Corporations complying with the requirements of this chapter shall have authority to contract in accordance with this chapter with attorneys in such manner as to assure to each participant holding a benefit certificate of the corporation the furnishing of such legal services by attorney under contract, or who shall agree to contract, to the extent agreed upon in prepaid legal service contract between the corporation and the participant . . . .

Revised Law

Sec. 961.302. AGREEMENT OF CONTRACTING ATTORNEYS. The contracting attorneys shall:

(1) guarantee to the participants the services stated under the participants' benefit certificates, except as provided by Section 961.254; and

(2) agree to perform without cost to the participants, other than the money of the nonprofit legal services corporation held for the participants' benefit under the corporation's plan of operation, services described by the benefit certificates. (V.T.I.C. Art. 23.15 (part).)

Source Law

Art. 23.15. The contracting attorneys shall guarantee to the participants the services stated under the benefit certificates and shall agree to perform such services which they agree to render to the participants under the benefit certificates without there being any liability for the

> cost thereof to the participants beyond the funds of such corporation held for their benefit in accordance with the plan of operation of the corporation. . . .

Revised Law

Sec. 961.303. LIMITATIONS ON CORPORATION'S RELATIONSHIP WITH ATTORNEYS AND PARTICIPANTS. (a) A nonprofit legal services corporation may not:

(1) contract to practice law; or

(2) control or attempt to control the relationship existing between a participant and the participant's attorney.

(b) The corporation may act only as an agent on behalf of its participants for legal services and, except as provided by Section 961.254, those services may be provided only by and through contracting attorneys. A contracting attorney must be an independent contractor maintaining a direct lawyer and client relationship with a participant and may not be an employee of the corporation. (V.T.I.C. Art. 23.12 (part).)

Source Law

> Art. 23.12. The corporation complying with the requirements of this chapter shall not contract itself to practice law in any manner, nor shall the corporation control or attempt to control the relations existing between a participant and his or her attorney, but the corporation shall confine its activities to contracting as an agent on behalf of its participants for legal services to be rendered only by and through contracting attorneys, who shall never be employees of the corporation but shall at all times be independent contractors maintaining a direct lawyer and client relationship with the participants. . . .

Revisor's Note

> V.T.I.C. Article 23.12 refers to legal services "to be rendered only by and through contracting attorneys." Under V.T.I.C. Article 23.15, revised in pertinent part as Section 961.254, a nonprofit legal services corporation may also issue indemnity contracts. Accordingly, the revised law adds a reference to Section 961.254.

Revised Law

Sec. 961.304. CONTRACT WITH ANY ATTORNEY REQUIRED. A nonprofit legal services corporation must agree to contract under Section 961.301 with any attorney licensed to practice law in this state. (V.T.I.C. Art. 23.12 (part).)

Source Law

Art. 23.12. . . . Such corporation must agree to contract under Article 23.11 of this code with any attorney licensed by the Supreme Court to practice law in Texas. . . .

Revisor's Note

V.T.I.C. Article 23.12 refers to an attorney "licensed by the Supreme Court to practice law in Texas." The revised law omits the reference to the supreme court as unnecessary. All attorneys licensed to practice law in Texas are licensed by the supreme court. See Section 82.021, Government Code.

Revised Law

Sec. 961.305. ATTORNEY INSURANCE REQUIRED. (a) Each contracting attorney shall maintain professional liability and errors and omissions insurance as required by the nonprofit legal services corporation with which the attorney contracts.

(b) The commissioner by rule may establish minimum amounts for coverage under Subsection (a). (V.T.I.C. Art. 23.12 (part).)

Source Law

Art. 23.12. . . . Contracting attorneys shall maintain such professional liability, and errors and omissions insurance as the corporation shall deem proper and the State Board of Insurance may by uniform rule declare a minimum amount of each such coverage to be maintained.

Revisor's Note

V.T.I.C. Article 23.12 permits the State Board of Insurance (now the commissioner of insurance) to adopt a "uniform" rule. The revised law omits the term "uniform" as unnecessary because under Section 36.001 all rules that the commissioner adopts must have general and uniform application.

Revised Law

Sec. 961.306. PAYMENT ONLY FOR SERVICES PROVIDED. A nonprofit legal services corporation may not pay any of the claim funds collected from participants to an attorney except for legal services that the attorney provided to participants. (V.T.I.C. Art. 23.18.)

Source Law

Art. 23.18. A corporation complying with the requirements of this chapter shall not pay any of the claim funds collected from participants to any attorney except for legal services rendered by such attorney to the participants.

Revised Law

Sec. 961.307. COMPLAINT REGARDING ATTORNEY. If the department receives a complaint concerning the performance of an attorney connected with a nonprofit legal services corporation, the department shall refer the complaint to:

(1) the supreme court of this state or a person that the supreme court designates to receive attorney grievances from the public, if the attorney is licensed by this state; or

(2) the appropriate licensing agency of another jurisdiction where the attorney is licensed, if the attorney is not licensed by this state. (V.T.I.C. Art. 23.22.)

Source Law

Art. 23.22. The State Board of Insurance shall refer a complaint received by it concerning the performance of an attorney licensed in this state who is connected with a corporation complying with this chapter to the Supreme Court of the State of Texas or to any person designated by the Supreme Court to receive attorney grievances from the public. The board shall refer a complaint regarding an attorney licensed in another jurisdiction who is connected with a corporation complying with this chapter to the appropriate licensing agency of the other jurisdiction.

[Sections 961.308-961.350 reserved for expansion]

SUBCHAPTER H. AGENTS

Revised Law

Sec. 961.351. DEFINITION. In this subchapter, "agent" means an individual who solicits contracts for legal services or enrolls applicants. (V.T.I.C. Art. 23.23, Sec. (a) (part).)

Source Law

Art. 23.23. (a) . . . An agent means a natural person who solicits legal services contracts or enrolls applicants.

Revised Law

Sec. 961.352. RULES TO LICENSE AND REGULATE AGENTS. The commissioner after notice and hearing may adopt reasonable rules necessary to license and regulate agents. (V.T.I.C. Art. 23.23, Sec. (a) (part).)

Source Law

Art. 23.23. (a) The State Board of Insurance may after notice and hearing promulgate such reasonable rules and regulations as are necessary to license and control agents of corporations complying with this chapter. . . .

Revised Law

Sec. 961.353. LICENSE AND EXAMINATION FEES. (a) Before issuing a license under this subchapter, the commissioner must receive from the person applying for the license:

(1) a nonrefundable license fee in an amount not to exceed $50; and

(2) unless the department accepts under Article 21.01-1 a qualifying examination administered by a testing service, an examination fee in an amount not to exceed $20.

(b) The commissioner shall set the amount of the fees.

(c) A new examination fee must be paid for each examination.

(d) An examination fee may not be refunded unless the person:

(1) not later than 24 hours before the time the examination begins, notifies the commissioner that an emergency situation exists;

(2) receives the commissioner's permission to not take the examination; and

(3) does not appear to take the examination. (V.T.I.C. Art. 23.23, Sec. (b).)

Source Law

(b) The Commissioner of Insurance shall collect in advance from agents of corporations complying with this chapter a nonrefundable license fee in an amount not to exceed $50 as determined by the State Board of Insurance. Unless the State Board of Insurance accepts a qualifying examination administered by a testing service as provided under Article 21.01-1, Insurance Code, as amended, the Commissioner of Insurance shall also collect in advance from such agents an examination fee in an amount not to exceed $20 as determined by the State Board of Insurance. A new examination fee shall be paid for each and every examination. The examination fee shall not be returned under any circumstances other than for failure to appear and take the examination after the applicant has given at least 24 hours notice of an emergency situation to the Commissioner of Insurance and received the commissioner's approval.

Revisor's Note

Section (b), V.T.I.C. Article 23.23, refers to Article 21.01-1, Insurance Code, "as amended." The revised law omits "as amended" for the reason stated in Revisor's Note (1) to Section 961.002.

Revised Law

Sec. 961.354. EXPIRATION. Unless the commissioner adopts a staggered renewal system under Article 21.01-2, a license issued to an agent expires on the earlier of:

(1) the second anniversary of the date the license is issued; or

(2) the date the agent's authority to act for a nonprofit legal services corporation is terminated. (V.T.I.C. Art. 23.23, Sec. (c).)

Source Law

(c) Except as may be provided by a staggered renewal system adopted under Section 2(f), Article 21.01-2 of this code, each license issued to agents of corporations complying with this chapter shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Commissioner of Insurance or the authority of the agent to act for the corporation complying with this chapter is terminated.

Revisor's Note

Section (c), V.T.I.C. Article 23.23, provides that an agent's license expires on a certain date "unless prior thereto it is suspended or revoked by the Commissioner of

Insurance." The revised law omits the quoted language as unnecessary because suspension or revocation of the license would cause the license to no longer be valid, and thus the expiration date would be rendered meaningless because of the nature of suspension or revocation and not because of the omitted statutory provision.

Revised Law

Sec. 961.355. RENEWAL; FEE. (a) A person may renew a license issued under this subchapter by filing with the department on or before the date the license expires a completed renewal application and paying the nonrefundable renewal fee.

(b) The department shall set the renewal fee in an amount not to exceed $50.

(c) A person may not renew a license that has expired or been suspended or revoked. (V.T.I.C. Art. 23.23, Sec. (d).)

Source Law

(d) Licenses which have not expired or which have not been suspended or revoked may be renewed by filing with the Board on or before the expiration date of the license a completed renewal application and paying a nonrefundable fee in an amount not to exceed $50 as determined by the State Board of Insurance.

Revised Law

Sec. 961.356. SUSPENSION. The department shall suspend a license issued to an agent if the agent is not operating under an appointment from a nonprofit legal services corporation. The department shall terminate the suspension when the department receives acceptable notice that an appointment exists. (V.T.I.C. Art. 23.23, Sec. (e) (part).)

Source Law

(e) . . . The State Board of Insurance shall suspend the license of an agent during any period in which the agent does not have an outstanding valid appointment. The suspension shall be lifted on receipt by the State Board of Insurance of acceptable notice of a valid appointment.

Revisor's Note

Section (e), V.T.I.C. Article 23.23, refers to an "outstanding valid appointment."

The revised law omits "outstanding" and "valid" as unnecessary because, in this context, the meaning of those terms is included in the meaning of an appointment. If an appointment is not "outstanding," then no appointment exists, and if an appointment is invalid, then no appointment was made.

Revised Law

Sec. 961.357. MULTIPLE REPRESENTATION; APPLICATION; FEES. (a) An agent licensed under this subchapter may apply to act as an agent for more than one nonprofit legal services corporation.

(b) The agent and the corporation must give notice to the department of any additional appointment authorizing the agent to act as an agent for that corporation. The notice must be accompanied by:

(1) a certificate from the corporation that the corporation desires to appoint the applicant as its agent;

(2) a nonrefundable fee; and

(3) any other information that the department requires.

(c) The commissioner shall set the fee in an amount not to exceed $16.

(d) The agent may act for the corporation if:

(1) the department approves the application for an additional appointment; or

(2) notice of disapproval is not received before the eighth day after the date the department receives the completed application and fee. (V.T.I.C. Art. 23.23, Sec. (e) (part).)

Source Law

(e) Any agent licensed under this article may represent and act as an agent for more than one corporation complying with this chapter at any time while the agent's license is in force, if the agent so desires. Any such agent and the corporation complying with this chapter must give notice to the State Board of Insurance of any additional appointment or appointments authorizing the agent to act for an additional corporation complying with this chapter. Such notice must be accompanied by a certificate from each corporation complying with this chapter to be named in each additional appointment that said corporation desires to appoint the applicant as its agent. This notice shall also contain such other information as the State Board of Insurance may require. The agent shall be required to pay a nonrefundable fee in an amount not to exceed $16 as determined by the State Board of Insurance for each additional appointment applied for, which fee shall accompany the notice. If approval of an additional appointment is not received from the State Board of Insurance before the eighth day after the date on which the completed application and fee were received by the Board, the agent and the corporation, in the absence of notice of disapproval, may assume that the State Board of Insurance approves the application, and the agent may act for the corporation. . . .

Revised Law

Sec. 961.358. DISPOSITION OF FEES. (a) The department shall deposit a fee collected under this subchapter to the credit of the Texas Department of Insurance operating account, to be used to administer this chapter and other state law governing agents of nonprofit legal services corporations. The fees may be used to pay salaries, travel expenses, office expenses, and other incidental expenses incurred in administering this chapter.

(b) Article 1.31A applies to a fee collected under this subchapter. (V.T.I.C. Art. 23.23, Sec. (f).)

Source Law

(f) All fees collected pursuant to this article must be deposited in the State Treasury to the credit of the State Board of Insurance operating fund and shall be used by the State Board of Insurance to administer the provisions of Chapter 23 and all laws of this state governing and regulating agents for such corporations. The fees may be used to pay salaries, traveling expenses, office expenses, and other incidental expenses incurred in the administration of this chapter. Article 1.31A of this code applies to fees collected under this section.

Revisor's Note

Section (f), V.T.I.C. Article 23.23, requires fees to be deposited in the state treasury to the credit of the State Board of Insurance operating fund. Under the authority of Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund. The revised law is drafted accordingly.

[Sections 961.359-961.400 reserved for expansion]

SUBCHAPTER I. DISSOLUTION AND LIQUIDATION OF CORPORATION

Revised Law

Sec. 961.401. SUPERVISION BY DEPARTMENT. The department shall supervise any dissolution or liquidation of a nonprofit legal services corporation. (V.T.I.C. Art. 23.06 (part).)

Source Law

Art. 23.06. Any dissolution or liquidation of any corporation subject to the provisions of this chapter shall be under the supervision of the State Board of Insurance. . . .

Revised Law

Sec. 961.402. VOLUNTARY DISSOLUTION. (a) The board of directors of a nonprofit legal services corporation may vote to dissolve the corporation at any time, but the corporation may not be dissolved without the department's approval.

(b) In a dissolution under this section, the officers of the corporation shall settle all outstanding obligations to participants and otherwise dispose of the corporation's affairs. After the officers have completed the corporation's liquidation and a final settlement has been filed with and approved by the department, the corporation shall be dissolved as provided by the provisions relating to voluntary dissolution under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes). (V.T.I.C. Art. 23.07 (part).)

Source Law

Art. 23.07. Any corporation operating under this chapter may be dissolved at any time by a vote of its board of directors, and after such action has been approved by the State Board of Insurance. In the case of voluntary dissolution, the disposition of the affairs of the corporation shall be made by the officers (including the settlement of all outstanding obligations to participants), and when the liquidation has been completed and a final statement, in acceptable form, filed with and approved by the State Board of

Insurance, the provisions for voluntary dissolution under the Texas Non-Profit Corporation Act shall be followed to dissolve the corporation. . . .

Revised Law

Sec. 961.403. INVOLUNTARY DISSOLUTION. If the commissioner after notice and hearing determines that a nonprofit legal services corporation is insolvent or has violated this chapter, the corporation's affairs shall be disposed of:

(1) by a liquidator appointed by and under the supervision of the commissioner; or

(2) in an appropriate case, under the direction of a court in Travis County. (V.T.I.C. Art. 23.07 (part).)

Source Law

Art. 23.07. . . . In all other cases where a corporation operating under this chapter is found to be insolvent, or to have violated the provisions of this chapter, on a determination of this condition, and after due notice and hearing, the affairs of the corporation shall be disposed of by a liquidator appointed by and under the supervision of the State Board of Insurance, or, in appropriate cases, under the direction of a court of competent jurisdiction in Travis County.

Revisor's Note

V.T.I.C. Article 23.07 refers to a court "of competent jurisdiction." The revised law omits the quoted language as unnecessary because the general laws of civil jurisdiction determine which courts have jurisdiction. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 961.404. PRIORITY OF CLAIMS. In a dissolution of a nonprofit legal services corporation, participants' claims have priority over all other claims except costs of liquidation. (V.T.I.C. Art. 23.06 (part).)

Source Law

Art. 23.06. . . . In case of dissolution of any group formed under the provisions of this chapter, participants' claims shall be given priority over all other claims except cost of liquidation.

Revisor's Note

V.T.I.C. Article 23.06 refers to dissolution of a "group formed under the provisions of this chapter." The revised law substitutes "nonprofit legal services corporation" for the quoted language for consistency with the other provisions of this chapter that refer to the entities formed under this chapter. In addition, under Subdivision (1), V.T.I.C. Article 23.02, revised as Section 961.052, an entity seeking to provide legal services under this chapter may enroll participants only "[a]fter incorporation."

[Chapters 962-980 reserved for expansion]

SUBTITLE I. COMPANIES THAT ARE NOT ORGANIZED IN TEXAS

CHAPTER 981. SURPLUS LINES INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

[Sections 981.010-981.050 reserved for expansion]

SUBCHAPTER B. ELIGIBILITY REQUIREMENTS FOR SURPLUS LINES INSURERS

CHAPTER 981. SURPLUS LINES INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 981.001. PURPOSE. (a) An insurance transaction that is entered into by a resident of this state with an eligible surplus lines insurer through a surplus lines agent because of difficulty in obtaining coverage from an authorized insurer is a matter of public interest.

(b) The transaction of surplus lines insurance is a subject of concern and it is necessary to provide for the regulation, taxation, supervision, and control of these transactions and the practices and matters related to these transactions by:

(1) requiring appropriate standards and reports concerning the placement of surplus lines insurance;

(2) imposing requirements necessary to make regulation and control of surplus lines insurance reasonably complete and effective;

(3) providing orderly access to eligible surplus lines insurers;

(4) ensuring the maintenance of fair and honest markets;

(5) protecting the revenues of this state; and

(6) protecting authorized insurers, which under the laws of this state must meet strict standards relating to the regulation and taxation of the business of insurance, from unfair competition by unauthorized insurers.

(c) To regulate and tax surplus lines insurance placed in accordance with this chapter within the meaning and intent of 15 U.S.C. Section 1011, this chapter provides an orderly method for the residents of this state to effect insurance with eligible surplus lines insurers through qualified, licensed, and supervised surplus lines agents in this state, if coverage is not available from authorized and regulated insurers engaged in business in this state, under reasonable and practical safeguards. (V.T.I.C. Art. 1.14-2, Sec. 1.)

Source Law

Art. 1.14-2

Sec. 1. Insurance transactions which are entered into by citizens of this state with eligible surplus lines insurers through a surplus lines agent as a result of difficulty in obtaining coverage from licensed insurers are a matter of public interest. The Legislature declares that such transaction of surplus lines insurance is a subject of concern and that it is necessary to provide for the regulation, taxation, supervision and control of such transactions and the practices and matters related thereto by requiring appropriate standards and reports concerning the placement of such insurance; by imposing requirements necessary to make such regulation and control reasonably complete and effective; by providing orderly access to eligible surplus lines insurers; by insuring the maintenance of fair and honest markets; by protecting the revenues of this state; and by protecting licensed insurers, which under the laws of this state must meet strict standards as to the regulation of the business of insurance and the taxation thereof, from unfair competition by unauthorized insurers. In order to properly regulate and tax such insurance placed in accordance with this Article within the meaning and intent of P.L. 79-15 (1945), (Chap. 20, 1st Sess., S. 340), 59 Stat. 33, the Legislature herein provides an orderly method for the public of this state to effect insurance with eligible surplus lines insurers through qualified, licensed and supervised surplus line agents in this state if coverage is not available from duly licensed, regulated insurers conducting business in this state and under reasonable and practical safeguards so that such insurance coverage may be obtained by residents of this state.

Revisor's Note

Section 1, V.T.I.C. Article 1.14-2, refers to P.L. 79-15 (1945), (Chap. 20, 1st Sess., S. 340), 59 Stat. 33. The commonly used citation for this provision is 15 U.S.C. Section 1011. The revised law is drafted accordingly.

Revised Law

Sec. 981.002. DEFINITIONS. In this chapter:

(1) "Eligible surplus lines insurer" means an insurer that is not an authorized insurer, but that is eligible under Subchapter B, in which surplus lines insurance is placed or may be placed under this chapter.

(2) "Stamping office" means the Surplus Lines Stamping Office of Texas.

(3) "Surplus lines agent" means an agent licensed under Subchapter E to procure an insurance contract from a surplus lines insurer.

(4) "Surplus lines insurance" means insurance coverage:

(A) for a subject that is resident, located, or to be performed in this state; and

(B) that may be placed, in accordance with this chapter, with an eligible surplus lines insurer. (V.T.I.C. Art. 1.14-2, Secs. 2(a)(1) (part), (b), 3(a) (part), 6A(a) (part); New.)

Source Law

Sec. 2. (a)(1) "Surplus lines agent" (i) is an agent . . . who is granted a surplus lines license in accordance with this Article, (ii) is a . . . agent . . . who is granted a surplus lines license in accordance with this Article and . . . (iii) is a . . . agent . . . who is granted a surplus lines license . . . .

(b) "Surplus lines insurer" means an unlicensed insurer deemed eligible pursuant to Section 8 of this Article in which an insurance coverage is placed or may be placed under this Article.

Sec. 3. (a) If insurance coverages of subjects resident, located or to be performed in this state cannot be procured from licensed insurers . . . , such coverages, hereinafter designated as surplus line insurance . . . .

Sec. 6A. (a) [There is hereby created a nonprofit association to be known as] the Surplus Lines Stamping Office of Texas. . . .

Revisor's Note

(1) Section 2(b), V.T.I.C. Article 1.14-2, defines a "surplus lines insurer" as certain unlicensed insurers "deemed eligible" under Section 8 of the article, revised as Subchapter B. For clarity and consistency, the revised law defines "eligible surplus lines insurer." Appropriate changes are made throughout this chapter.

(2) Section 3(a), V.T.I.C. Article 1.14-2, refers to insurance that cannot be obtained from "licensed" insurers. The revised law substitutes "authorized" for "licensed" throughout this chapter because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

(3) The definition of "stamping office" is derived from Section 6A(a), V.T.I.C. Article 1.14-2, and is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 981.003. APPLICABILITY OF CHAPTER. This chapter applies to insurance:

(1) of a subject that is resident, located, or to be performed in this state; and

(2) that is obtained, continued, or renewed through:

(A) negotiations or an application wholly or partly occurring or made within or from within this state; or

(B) premiums wholly or partly remitted directly or indirectly from within this state. (V.T.I.C. Art. 1.14-2, Sec. 3(b).)

Source Law

(b) Any insurance of subjects resident, located or to be performed in this state, procured through negotiations or an application, in whole or in part occurring or made within or from within this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of Paragraph (a).

Revised Law

Sec. 981.004. SURPLUS LINES INSURANCE AUTHORIZED. (a) An eligible surplus lines insurer may provide surplus lines insurance only if:

(1) the full amount of required insurance cannot be obtained, after a diligent effort, from an insurer authorized to write and actually writing that kind and class of insurance in this state;

(2) the insurance is placed through a surplus lines agent; and

(3) the insurer meets the eligibility requirements of Subchapter B as of the inception date and annual anniversary date of each insurance contract, cover note, or other confirmation of insurance.

(b) An eligible surplus lines insurer may provide surplus lines insurance only in the amount that exceeds the amount of insurance obtainable from authorized insurers. (V.T.I.C. Art. 1.14-2, Secs. 3(a) (part), 5(a), 7(c).)

Source Law

Sec. 3. (a) If insurance coverages . . . cannot be procured from licensed insurers after diligent effort, such coverages . . . may be procured from eligible surplus lines insurers subject to the following conditions:

1. The insurance must be eligible for surplus lines under Section 5.

2. The insurer must be an eligible surplus lines insurer under Section 8.

3. The insurance must be placed through a licensed . . . surplus lines agent . . . .

4. The other applicable provisions of this section must be complied with.

Sec. 5. (a) No insurance coverage shall be eligible for surplus lines unless the full amount of insurance required is not procurable, after a diligent effort has been made to do so, from among the insurers licensed to transact and actually writing that kind and class of insurance in this state, and the amount of insurance eligible for surplus lines shall be only the amount in excess of the amount so procurable from licensed insurers.

[Sec. 7]

(c) The insurer must be an eligible surplus lines insurer as of the inception date and annual anniversary date of every insurance contract, cover note, or other confirmation of insurance.

Revisor's Note

Section 3(a), V.T.I.C. Article 1.14-2, authorizes the issuance of surplus lines insurance if certain requirements are met, including a requirement that "[t]he other applicable provisions of this section must be complied with." The revised law omits the quoted language as unnecessary. If another law applies, that law provides sufficient authority to require compliance.

Revised Law

Sec. 981.005. VALIDITY OF CONTRACTS. (a) Unless a material and intentional violation of this chapter or Section 12, Article 1.14-2, exists, an insurance contract obtained from an eligible surplus lines insurer is:

(1) valid and enforceable as to all parties; and

(2) recognized in the same manner as a comparable contract issued by an authorized insurer.

(b) A material and intentional violation of this chapter or Section 12, Article 1.14-2, does not preclude the insured from enforcing the insured's rights under the contract. (V.T.I.C. Art. 1.14-2, Sec. 9.)

Source Law

Sec. 9. (a) Insurance contracts procured from an eligible surplus lines insurer shall be fully valid and enforceable as to all parties, and shall be given recognition in all matters and respects to the same effect and extent as like contracts issued by licensed insurers unless there was a material and intentional violation of this Article.

(b) In the event of a material and intentional violation of this Article, the insured shall not be precluded from enforcing his rights in accordance with the terms and provisions of such contract.

Revised Law

Sec. 981.006. SANCTIONS. Chapter 82 applies to a surplus lines agent or an eligible surplus lines insurer that violates:

(1) this chapter;

(2) Section 12, Article 1.14-2; or

(3) a rule or order adopted under Subchapter B or Section 981.005. (V.T.I.C. Art. 1.14-2, Secs. 17, 17A.)

Source Law

Sec. 17. Any violation of this Article shall subject the surplus lines agent or eligible surplus lines insurer to all of the provisions and sanctions contained in Section 7, Article 1.10, of this Code.

Sec. 17A. If a surplus lines agent or eligible surplus lines insurer violates Section 8 or 9 of this article or a rule, regulation, or order adopted under that provision, the State Board of Insurance may assess a penalty against that agent or insurer as provided by Section 7, Article 1.10, of this code.

Revisor's Note

Section 17A, V.T.I.C. Article 1.14-2, refers to a "rule, regulation, or order." Throughout this chapter, the revised law omits "regulation" as unnecessary. Under Section 311.005, Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

Revised Law

Sec. 981.007. LIABILITY OF SURPLUS LINES INSURER FOR LOSSES AND UNEARNED PREMIUMS. (a) This section applies if:

(1) an eligible surplus lines insurer has assumed a risk under this chapter; and

(2) the surplus lines agent who placed the insurance has received the premium for that risk.

(b) If a coverage question between the eligible surplus lines insurer and the insured arises regarding the assumed risk, the insurer is considered to have received the premium due for that coverage.

(c) The eligible surplus lines insurer is liable to the insured for any:

(1) loss covered by the insurance; and

(2) unearned premium payable to the insured on cancellation of the insurance.

(d) This section applies without regard to whether the surplus lines agent is indebted to the insurer regarding the insurance or for any other cause.

(e) An eligible surplus lines insurer that assumes a risk under this chapter subjects itself to this section. (V.T.I.C. Art. 1.14-2, Sec. 10.)

Source Law

Sec. 10. If the surplus lines insurer has assumed the risk in accordance with this Article and if the premium therefor has been received by the surplus lines agent who placed such insurance, then in all questions thereafter arising under the coverage as between the insurer and the insured the insurer shall be deemed to have received the premium due to it for such coverage; and the insurer shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the surplus lines agent is indebted to the insurer with respect to such insurance or for any other cause. Each surplus lines insurer assuming a surplus lines risk under this Article shall be deemed thereby to have subjected itself to the terms of this subsection.

Revised Law

Sec. 981.008. SURPLUS LINES INSURANCE PREMIUM TAX. The premiums charged for surplus lines insurance are subject to the premium tax imposed under Section 12, Article 1.14-2. (New.)

Revisor's Note

Section 12, Article 1.14-2, is not revised as a part of this chapter. For the convenience of the reader, the revised law adds a reference to that section.

Revised Law

Sec. 981.009. RULES. The commissioner may adopt rules to enforce this chapter. (V.T.I.C. Art. 1.14-2, Sec. 3A (part).)

Source Law

Sec. 3A. The State Board of Insurance may promulgate rules to enforce this article. . . .

Revisor's Note

Section 3A, V.T.I.C. Article 1.14-2, refers to the "State Board of Insurance." Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished the State Board of Insurance and transferred its functions to the commissioner of insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the State Board of Insurance have been changed appropriately.

[Sections 981.010-981.050 reserved for expansion]

SUBCHAPTER B. ELIGIBILITY REQUIREMENTS FOR SURPLUS LINES INSURERS

Revised Law

Sec. 981.051. AUTHORIZATION REQUIRED. (a) Before an insurer may issue surplus lines insurance, the insurer must hold an authorization to engage in the business of insurance from its domiciliary state or country.

(b) The authorization from the domiciliary state or country must be for the same kind or class of insurance to be written in this state as surplus lines insurance.

(c) The surplus lines insurer must provide to the commissioner satisfactory evidence that the insurer holds the authorization. (V.T.I.C. Art. 1.14-2, Secs. 8(g), (m).)

Source Law

(g) Every insurer proposing to transact surplus lines insurance within this state shall hold a current license or authority from its domiciliary state or country to conduct the business of insurance. The license or authority from the domiciliary state or country must be for the kind or class of insurance to be written in this state as surplus lines insurance, and satisfactory evidence that the insurer holds the required license or authorization must be provided to the Commissioner of Insurance.

(m) An insurer is not an eligible surplus lines insurer unless it is authorized to write the same coverage in the jurisdiction in which the insurer is licensed or certificated to do business.

Revisor's Note

Sections 8(g) and (m), V.T.I.C. Article 1.14-2, refer to an insurer that holds a "current license or authority" or that is "licensed or certificated." The revised law omits "current license," "authority," and "certificated" as unnecessary because those terms are included in an "authorization" to engage in the business of insurance. For example, if an insurer possessed an expired license, that insurer would not be authorized to engage in the business of insurance in the insurer's domiciliary state.

Revised Law

Sec. 981.052. GOOD REPUTATION AND PROMPT SERVICE REQUIRED. To issue surplus lines insurance, an insurer must have a good reputation and provide reasonably prompt service to its policyholders in the payment of just losses and claims. (V.T.I.C. Art. 1.14-2, Sec. 8(h).)

Source Law

(h) The insurer must be of good repute and provide reasonably prompt service to its policyholders in the payment of just losses and claims.

Revised Law

Sec. 981.053. COMPETENCE, TRUSTWORTHINESS, AND EXPERIENCE REQUIRED. An insurer may not issue surplus lines insurance if:

(1) the insurer's management is:

(A) incompetent or untrustworthy; or

(B) so lacking in insurance company managerial experience as to make the insurer's proposed operation hazardous to the insurance-buying public; or

(2) the commissioner has good reason to believe that the insurer is affiliated directly or indirectly, through ownership, control, reinsurance transactions, or other insurance or business relations, with a person whose business operations are or have been detrimental to policyholders, shareholders, investors, creditors, or the public. (V.T.I.C. Art. 1.14-2, Sec. 8(i).)

Source Law

(i) No insurer shall be eligible if the management is incompetent or untrustworthy, or so lacking in insurance company managerial experience as to make its proposed operation hazardous to the insurance-buying public; or if the State Board of Insurance has good reason to believe that it is affiliated directly or indirectly through ownership, control, reinsurance transactions or other insurance or business relations, with any person whose business operations are or have been detrimental to policyholders, stockholders, investors, creditors or to the public.

Revised Law

Sec. 981.054. CERTAIN PRECONDITIONS NOT ALLOWED. An eligible surplus lines insurer may not require as a condition precedent to writing new or renewal surplus lines insurance that the insured or prospective insured place with the insurer other insurance that is not obtainable as surplus lines insurance. (V.T.I.C. Art. 1.14-2, Sec. 8(k).)

Source Law

(k) No new or renewal surplus lines insurance shall be placed with any eligible surplus lines insurer which requires as a condition precedent to writing such new or renewal insurance that the prospective insured or the insured place other insurance not procurable as surplus lines insurance with such eligible surplus lines insurer.

Revised Law

Sec. 981.055. FAILURE TO PAY PENALTY. An insurer may not issue surplus lines insurance if the insurer or its agents have failed to pay a statutory penalty imposed on the insurer or its agents. (V.T.I.C. Art. 1.14-2, Sec. 8(j) (part).)

Source Law

(j) No insurer shall be eligible if the insurer or its agents have failed to submit to any fine or penalty levied pursuant to statute. . . .

Revisor's Note

Section 8(j), V.T.I.C. Article 1.14-2, refers to a "fine or penalty." The revised law omits "fine" as unnecessary because it is included in the meaning of "penalty."

Revised Law

Sec. 981.056. FAILURE TO PAY PREMIUM TAXES. An insurer may not issue surplus lines insurance if the insurer is obligated to pay a premium tax in this state and has not paid the tax. (V.T.I.C. Art. 1.14-2, Sec. 8(j) (part).)

Source Law

(j) . . . No insurer shall be eligible if the insurer is obligated to pay and has failed to pay premium taxes in the state. . . .

Revised Law

Sec. 981.057. MINIMUM CAPITAL AND SURPLUS REQUIREMENTS. (a) Except as provided by Subsection (b), an eligible surplus lines insurer must maintain capital and surplus in an amount of at least $15 million.

(b) If an eligible surplus lines insurer is an insurance exchange created by the laws of another state:

(1) the syndicates of the exchange must maintain under terms acceptable to the commissioner capital and surplus, or the equivalent under the laws of the exchange's domiciliary jurisdiction, in an amount of at least $75 million in the aggregate;

(2) the exchange must maintain under terms acceptable to the commissioner at least 50 percent of the policyholder surplus of each individual syndicate in a custodial account accessible to the exchange or the exchange's domiciliary commissioner in the event of insolvency or impairment of the individual syndicate; and

(3) an individual syndicate, to be eligible to accept surplus lines insurance placements from this state as an exchange member, must maintain under terms acceptable to the commissioner capital and surplus, or the equivalent under the laws of the exchange's domiciliary jurisdiction, in the amount of at least:

(A) $5 million, if the syndicate is a member of an insurance exchange that maintains at least $15 million for the protection of all exchange policyholders; or

(B) the greater of:

(i) the minimum capital and surplus of the exchange's domiciliary jurisdiction; or

(ii) $15 million. (V.T.I.C. Art. 1.14-2, Sec. 8(b) (part).)

Source Law

(b) . . . An insurer shall not be an eligible surplus lines insurer unless:

(1) the insurer has a minimum

capital and surplus of $15 million; or

(2) in the case of an insurance exchange created by the laws of another state:

(A) the syndicates of the exchange must maintain under terms acceptable to the commissioner capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than $75 million in the aggregate;

(B) the exchange must maintain under terms acceptable to the commissioner at least 50 percent of the policyholder surplus of each syndicate in a custodial account accessible to the exchange or its domiciliary commissioner in the event of insolvency or impairment of the individual syndicate; and

(C) each individual syndicate, to be eligible to accept surplus lines insurance placements from this state as a member of the exchange must meet either of the following requirements:

(i) in the case of an insurance exchange that maintains funds in an amount of at least $15 million for the protection of all exchange policyholders, the syndicate must maintain under terms acceptable to the commissioner minimum capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of at least $5 million; or

(ii) in the case of an insurance exchange that does not maintain funds in an amount of at least $15 million for the protection of all exchange policyholders, the syndicate must maintain under terms acceptable to the commissioner minimum capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of at least the greater of:

(a) the minimum capital and surplus of its domiciliary jurisdiction; or

(b) $15 million.

Revised Law

Sec. 981.058. ALIEN INSURERS: TRUST FUND REQUIREMENT. In addition to meeting the minimum capital and surplus requirements prescribed by Section 981.057, an alien surplus lines insurer must provide evidence that:

(1) the insurer maintains in the United States an irrevocable trust fund in a Federal Reserve System member bank in an amount of at least $5.4 million for the protection of all its policyholders in the United States; and

(2) the trust fund consists of:

(A) cash;

(B) securities;

(C) letters of credit; or

(D) investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of an insurer authorized to write similar kinds and classes of insurance in this state. (V.T.I.C. Art. 1.14-2, Sec. 8(d).)

Source Law

(d) In addition to meeting the minimum capital and surplus requirements provided by this section, an alien insurer must provide evidence that it maintains in the United States an irrevocable trust fund in a Federal Reserve System member bank in an amount not less than $5.4 million for the protection of all its policyholders in the United States and that the trust fund consists of cash, securities, letters of credit, or investments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of authorized insurers licensed to write like kinds and classes of insurance in this state.

Revised Law

Sec. 981.059. ALTERNATIVE FOR CERTAIN INSURER GROUPS. (a) This section applies only to an insurer group that includes unincorporated individual insurers.

(b) Instead of the minimum capital and surplus requirements prescribed by Section 981.057, an insurer group may maintain a trust fund in an amount of at least $50 million as security to the full amount of the trust fund for all policyholders and creditors in the United States of each group member.

(c) Except as provided by this section, the trust fund must comply with the terms specified by Section 981.058 for the trust fund required by that section. (V.T.I.C. Art. 1.14-2, Sec. 8(f).)

Source Law

(f) Instead of the minimum capital and surplus requirements provided by this section, a group of insurers, which group includes unincorporated individual insurers, may maintain a trust fund in an amount not less than $50 million as security to the full amount of the trust fund for all policyholders and creditors in the United States of each member of the group. Except as specifically otherwise provided by this subsection, the trust fund must comply with the terms and conditions provided by Subsection (d) of this section for the trust fund required by that subsection.

Revisor's Note

Section 8(f), V.T.I.C. Article 1.14-2, refers to "terms and conditions." The revised law omits "conditions" because "conditions" is included in the meaning of "terms."

Revised Law

Sec. 981.060. EXEMPTION DUE TO MINIMUM PREMIUM LEVEL. (a) The commissioner by rule shall exempt an eligible surplus lines insurer from the minimum capital and surplus requirements prescribed by Section 981.057 if the insurer writes less than a minimum level of insurance premium in this state.

(b) The rules must specify the minimum level of insurance premium. (V.T.I.C. Art. 1.14-2, Sec. 8(c) (part).)

Source Law

(c) . . . The commissioner, by rule, shall exempt an insurer from the minimum capital and surplus requirements of Subsection (b) of this section if the insurer writes less than a minimum level of insurance premium in this state. The rules must specify the minimum level of insurance premium.

Revised Law

Sec. 981.061. EXEMPTION DUE TO CERTAIN INSURER CHARACTERISTICS. The commissioner may exempt an eligible surplus lines insurer from the minimum capital and surplus requirements prescribed by Section 981.057 if the commissioner determines, after a hearing, that the exemption is warranted based on factors such as:

(1) the insurer's quality of management;

(2) the capital and surplus of a parent company;

(3) the insurer's underwriting profit and investment income trends;

(4) the insurer's reinsurance contracts;

(5) the insurer's record and reputation in the industry; and

(6) any other information the commissioner requires to make a determination. (V.T.I.C. Art. 1.14-2, Sec. 8(c) (part).)

Source Law

(c) An insurer may be exempt from the minimum capital and surplus requirements provided by Subsection (b) of this section if the Commissioner of Insurance finds, after public hearing, that the exemption is warranted based on factors such as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, reinsurance contracts, company record and reputation within the industry, and other information the commissioner requires to make a determination. . . .

Revised Law

Sec. 981.062. EXEMPTION DUE TO SIZE OF INSURER AND OTHER FACTORS. (a) The commissioner may exempt an eligible surplus lines insurer from the minimum capital and surplus requirements prescribed by Section 981.057 if the commissioner determines, after a hearing, that the insurer complies with the following requirements:

(1) the insurer has capital and surplus in an amount of at least $6 million;

(2) the amount of net risk retained by the insurer after ceding to a reinsurer is reasonable and does not exceed 10 percent of the insurer's capital and surplus;

(3) the annual ratio of net written premiums to surplus of the insurer does not exceed 2.5 to 1;

(4) the insurer's reinsurance company is rated at least "B+" by the A. M. Best Company;

(5) the ownership interest in the insurer of an agent who places insurance with the insurer does not exceed 10 percent;

(6) the insurer's managing head, officers, or directors have sufficient insurance ability, standing, and good record to make probable the continued success of the insurer;

(7) the composition, quality, duration, and liquidity of the insurer's investment portfolio are prudent;

(8) the insurer is audited annually by an independent certified public accountant who is in good standing with the American Institute of Certified Public Accountants and is licensed to practice by the Texas State Board of Public Accountancy, and a copy of the audit is filed with the commissioner;

(9) the number and type of complaints against the insurer are not excessive in relation to the number of insurance policies written by the insurer; and

(10) the insurer is acting in good faith in requesting an exemption.

(b) The commissioner may waive any of the requirements applicable to an insurer under Subsection (a) if, in the commissioner's judgment, a waiver would not adversely affect the insurer's policyholders.

(c) The commissioner may annually renew the exemption if the eligible surplus lines insurer certifies each year that the insurer continues to comply with the requirements under Subsection (a).

(d) The commissioner may hold a hearing at any time to determine if the continued exemption is warranted. (V.T.I.C. Art. 1.14-2, Sec. 8(e).)

<u>Source Law</u>

(e) A surplus lines insurer may be exempt from the minimum capital and surplus requirements of this article if the commissioner finds, after a public hearing, that the applicant for exemption complies with each of the following conditions:

1. the insurer has at least $6 million in capital and surplus;

2. the amount of net risk retained after ceding to a reinsurer is reasonable and does not exceed 10 percent of the capital and surplus of the insurer;

3. the annual ratio of net written premiums to surplus of the insurer does not exceed 2.5 to 1;

4. the reinsurance company of the insurer is rated at least "B+" by the A.M. Best Company;

5. the ownership interest in the insurer of an agent who places insurance with it does not exceed 10 percent;

6. the officers, directors, or managing head have sufficient insurance ability, standing, and good record to render

continued success of the company probable;

7. the composition, quality, duration, and liquidity of the insurer's investment portfolio are prudent;

8. the insurer is audited annually by an independent certified public accountant who is in good standing with the American Institute of Certified Public Accountants and is licensed to practice by the Texas State Board of Public Accountancy, and a copy of such audit is filed with the commissioner;

9. the number and type of complaints are not excessive relative to the number of insurance policies written; and

10. the insurer is acting in good faith in applying for an exemption.

The commissioner may continue the exemption in force on an annual basis upon the filing of a certificate by the insurer that the above conditions remain true and correct. The commissioner may hold a public hearing, however, at any time to determine that the continued exemption is warranted. The commissioner may waive any of the above 10 conditions if in her or his judgment the policyholders of the insurer would not be adversely affected thereby.

Revisor's Note

Section 8(e), V.T.I.C. Article 1.14-2, refers to a "public hearing." Throughout this chapter, the revised law omits "public" as unnecessary. In context, "hearing" means a hearing open to the public.

Revised Law

Sec. 981.063. COMMISSIONER OR DEPARTMENT NOT RESPONSIBLE FOR DETERMINING UNAUTHORIZED INSURER'S FINANCIAL CONDITION OR CLAIMS PRACTICES. This subchapter does not impose on the commissioner or department a responsibility to determine the actual financial condition or claims practices of an unauthorized insurer as described by Chapter 101. (V.T.I.C. Art. 1.14-2, Sec. 8(l).)

Source Law

(l) This section shall not be deemed to cast upon the State Board of Insurance any duty or responsibility to determine the actual financial condition or claims practice of any unlicensed insurer or any unauthorized insurer as defined in Article 1.14-1 of this code.

Revisor's Note

(1) Section 8(l), V.T.I.C. Article 1.14-2, refers to a "duty or responsibility." The revised law omits "duty" as unnecessary because it is included in the meaning of "responsibility."

(2) Section 8(l), V.T.I.C. Article 1.14-2, refers to "any unlicensed insurer or any unauthorized insurer as defined in Article 1.14-1 of this code." The revised law omits "unlicensed insurer" as unnecessary because it is included in the meaning of "unauthorized insurer."

Revised Law

Sec. 981.064. COMMISSIONER MAY ORDER REVOCATION OF CONTRACTS. The commissioner may order the revocation of an insurance contract issued by an eligible surplus lines insurer that does not meet the eligibility requirements of this subchapter. (V.T.I.C. Art. 1.14-2, Sec. 8(j) (part).)

Source Law

(j) . . . The State Board of Insurance may order revocation of insurance contracts issued by insurers that do not conform with the eligibility requirements of this section.

Revised Law

Sec. 981.065. APPLICABILITY TO CONTRACT EXTENSION. This subchapter and Sections 981.101(b), 981.210, and 981.211 apply to an extension of an insurance contract beyond its original expiration date. (V.T.I.C. Art. 1.14-2, Sec. 7(d).)

Source Law

(d) An extension of a contract beyond its original expiration date shall be subject to Section 7(a) and Section 8 of this Article.

[Sections 981.066-981.100 reserved for expansion]

SUBCHAPTER C. REQUIREMENTS AND PROCEDURES FOR ISSUANCE OF SURPLUS LINES DOCUMENTS

Revised Law

Sec. 981.101. REQUIREMENTS FOR SURPLUS LINES DOCUMENTS. (a)

In this section, "surplus lines document" means each new or renewal insurance contract, certificate, cover note, or other confirmation of insurance obtained and delivered as surplus line coverage under this chapter.

(b) A surplus lines document must state, in 11-point type, the following:

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as surplus line coverage under the Texas insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created under Article 21.28-C, Insurance Code. Section 12, Article 1.14-2, Insurance Code, requires payment of a ______ (insert appropriate tax rate) percent tax on gross premium.

(c) A surplus lines document must show:

(1) the description and location of the subject of the insurance;

(2) the coverage, conditions, and term of the insurance;

(3) the premium and rate charged, and premium taxes to be collected from the insured;

(4) the name and address of:

(A) the insured;

(B) the insurer; and

(C) the insurance agent who obtained the surplus line coverage; and

(5) if the direct risk is assumed by more than one insurer:

(A) the name and address of each insurer; and

(B) the proportion of the entire direct risk assumed by each insurer. (V.T.I.C. Art. 1.14-2, Secs. 7(a), (b).)

Source Law

Sec. 7. (a) Every new or renewal insurance contract, certificate, cover note or other confirmation of insurance procured and delivered as a surplus line coverage pursuant to this Article shall bear the name and address of the insurance agent who procured it and shall have stamped or affixed upon it in 11-point type the following: "This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus line coverage pursuant to the Texas insurance statutes. The State Board of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and this insurer is not a member of the property and casualty insurance guaranty association created under Article 21.28-C, Insurance Code.

Article 1.14-2, Insurance Code, requires payment of ______ (insert appropriate tax rate) percent tax on gross premium."

(b) Such document shall show the description and location of the subject of the insurance, coverage, conditions and term of the insurance, the premium and rate charged and premium taxes to be collected from the insured, and the name and address of the insured and insurer. If the direct risk is assumed by more than one insurer, the document shall state the name and address and proportion of the entire direct risk assumed by each insurer.

Revised Law

Sec. 981.102. LIMIT ON USE OF SURPLUS LINES POLICY OR CONTRACT FORMS. A surplus lines insurance policy or contract form may not be used unless use of the form is:

(1) reasonably necessary for the principal purposes of the insurance coverage; or

(2) not contrary to the purposes of this chapter regarding the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers. (V.T.I.C. Art. 1.14-2, Sec. 5(b).)

Source Law

(b) Policy or contract forms shall not be eligible unless the use is reasonably necessary for the principal purposes of the coverage or unless the use would not be contrary to the purposes of this Article with respect to the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers.

Revised Law

Sec. 981.103. DELIVERY TO INSURED OF SURPLUS LINES DOCUMENTS. (a) On placing new or renewal surplus lines coverage, a surplus lines agent shall promptly issue and deliver to the insured or to the insured's agent the following evidence of insurance:

(1) the policy issued by the insurer; or

(2) if the policy is not available, a certificate, cover note, or other confirmation of insurance.

(b) If the policy is not available at the time of placement of the insurance, the surplus lines agent shall, on the insured's request and as soon as reasonably possible:

(1) obtain the policy from the insurer; and

(2) deliver the policy to the insured to replace the certificate, cover note, or other confirmation of insurance previously issued.

(c) A surplus lines agent may not deliver the evidence of insurance described by Subsection (a), or purport to insure or represent that insurance will be or has been granted by an eligible surplus lines insurer, unless the agent:

(1) has prior written authority from the insurer for the insurance; or

(2) has received information from the insurer in the regular course of business that:

(A) the insurance has been granted; or

(B) an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured. (V.T.I.C. Art. 1.14-2, Secs. 6(a), (c), (e).)

Source Law

Sec. 6. (a) Upon placing a new or renewal surplus line coverage, the surplus lines agent shall promptly issue and deliver to the insured or his agent, as the case may be, evidence of the insurance consisting either of the policy as issued by the insurer or, if such policy is not then available, a certificate, cover note or other confirmation of insurance.

(c) No surplus lines agent shall deliver any such document, or purport to insure or represent that insurance will be or has been granted by any eligible surplus lines insurer unless he has prior written authority from the insurer for the insurance, or has received information from the insurer in the regular course of business that such insurance has been granted, or an insurance policy providing the insurance actually has been issued by the insurer and delivered to the insured.

(e) If a policy issued by the insurer is not available upon placement of the insurance and the surplus lines agent has delivered a certificate, cover note or confirmation, as hereinabove provided, upon request therefor by the insured the surplus lines agent shall as soon as reasonably possible procure from the insurer its policy evidencing the insurance and deliver the policy to the insured in replacement of the certificate, cover note or confirmation theretofore issued.

Revised Law

Sec. 981.104. DELIVERY TO INSURED OF REVISED SURPLUS LINES DOCUMENTS. (a) A surplus lines agent shall promptly deliver to the insured a substitute certificate, cover note, confirmation, or endorsement for the original document showing the current status of the coverage and the insurers responsible for that coverage if, after the delivery of the original document, a change is made:

(1) to the identity of the insurers;

(2) to the proportion of the direct risk assumed by the insurer as stated in the original document; or

(3) in any other material respect as to the insurance

coverage evidenced by the document.

(b) A change made under Subsection (a) may not result in coverage or an insurance contract that would violate this chapter or Section 12, Article 1.14-2, if originally issued on that basis. (V.T.I.C. Art. 1.14-2, Sec. 6(d).)

Source Law

(d) If after the delivery of any such document there is any change as to the identity of the insurers, or the proportion of the direct risk assumed by the insurer as stated in the original certificate, cover note or confirmation, or in any other material respect as to the insurance coverage evidenced by such a document, the surplus lines agent shall promptly deliver to the insured a substitute certificate, cover note, confirmation or endorsement for the original such document, accurately showing the current status of the coverage and the insurers responsible thereunder. No such change shall result in a coverage or insurance contract which would be in violation of this Article if originally issued on such basis.

Revisor's Note

Section 6(d), V.T.I.C. Article 1.14-2, requires that a substitute document "accurately" show the current status of the coverage. The revised law omits "accurately" as unnecessary and as not adding to the clear meaning of the law. In the context of the section, "accurately" is included in the meaning of "showing." The absence of "accurately" does not imply that the document may "inaccurately" show coverage.

Revised Law

Sec. 981.105. FILING WITH STAMPING OFFICE. (a) Not later than the 60th day after the later of the effective date or the issue date of new or renewal surplus lines insurance, a surplus lines agent shall file with the stamping office:

(1) a copy of the policy issued; or

(2) if the policy has not been issued, a copy of the certificate, cover note, or other confirmation of insurance delivered to the insured.

(b) A surplus lines agent shall also promptly file with the stamping office:

(1) a copy of each substitute certificate, cover note, or other confirmation of insurance delivered to an insured;

(2) a copy of each endorsement of an original policy, certificate, cover note, or other confirmation of insurance delivered to an insured; and

(3) a memorandum from the agent informing the stamping office of the substance of any change represented by a document described by Subdivision (1) or (2), as compared with the original coverage. (V.T.I.C. Art. 1.14-2, Sec. 6(b).)

Source Law

(b) Within 60 days after the effective date or issue date, whichever is later, of any new or renewal surplus lines insurance contract, the surplus lines agent shall file with the Surplus Lines Stamping Office of Texas a true and correct copy of the contract issued. If a contract has not been issued, the surplus lines agent shall so file a true and correct copy of his certificate, cover note or other confirmation of insurance as delivered to the insured. The surplus lines agent shall likewise promptly file with the Surplus Lines Stamping Office of Texas a true and correct copy of any substitute certificate, cover note or other confirmation of insurance, and of every endorsement of an original policy, certificate, cover note or other confirmation of insurance, delivered to an insured, together with such surplus lines agent's memorandum informing the Surplus Lines Stamping Office of Texas as to the substance of any change represented by such substitute certificate, cover note or other confirmation, or of any such endorsement, as compared with the coverage as originally placed or issued.

Revisor's Note

Section 6(b), V.T.I.C. Article 1.14-2, refers to "true and correct" copies. The revised law omits the quoted language as unnecessary because "true and correct" is included in the meaning of "copy." For example, the absence of "true and correct" before "copy" does not imply that one can make a fraudulent copy of a document required by a statute.

[Sections 981.106-981.150 reserved for expansion]

SUBCHAPTER D. SURPLUS LINES STAMPING OFFICE

Revised Law

Sec. 981.151. STATUS AS NONPROFIT ASSOCIATION. The Surplus Lines Stamping Office of Texas is a nonprofit association. (V.T.I.C. Art. 1.14-2, Sec. 6A(a) (part).)

Source Law

Sec. 6A. (a) There is hereby created a nonprofit association to be known as the Surplus Lines Stamping Office of Texas. . . .

Revisor's Note

Section 6A(a), V.T.I.C. Article 1.14-2, creates the Surplus Lines Stamping Office of Texas. The revised law omits "[t]here is hereby created" as unnecessary because the law creating the office is executed.

Revised Law

Sec. 981.152. BOARD OF DIRECTORS. (a) The board of directors of the stamping office exercises the powers of the office.

(b) The board consists of nine members appointed by the commissioner. Four members must represent the public and have a minimum of three years of experience in purchasing commercial insurance. A public representative may not:

(1) be an officer, director, or employee of an insurer, insurance agency, agent, broker, solicitor, or adjuster or any other business entity regulated by the department;

(2) be a person required to register under Chapter 305, Government Code; or

(3) be related to a person described by Subdivision (1) or (2) within the second degree by affinity or consanguinity.

(c) A board member serves a term as established in the plan of operation. (V.T.I.C. Art. 1.14-2, Secs. 6A(b) (part), (c).)

Source Law

(b) . . . It shall exercise its powers through a board of directors established under Subsection (c) of this section. . . .

(c) The stamping office shall function through a board of directors appointed by the State Board of Insurance. The board of directors of the stamping office shall consist of 9 members, who serve terms as established in the plan of operation. Four of the members of the board of directors must represent the general public and shall have a minimum of three years of experience in the purchase of commercial insurance. A public representative may not be:

(1) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the State Board of Insurance;

(2) a person required to register with the secretary of state under Chapter 305, Government Code; or

(3) related to a person described by Subdivision (1) or (2) of this subsection within the second degree of affinity or consanguinity.

Revisor's Note

Section 6A(c)(2), V.T.I.C. Article 1.14-2, refers to a person "required to register with the secretary of state under Chapter 305, Government Code." The revised law omits the reference to the secretary of state because under Chapter 304, Acts of the 72nd Legislature, Regular Session, 1991, a person formerly required to register with the secretary of state must now register with the Texas Ethics Commission under Chapter 305, Government Code. A reference to the Texas Ethics Commission is unnecessary because Chapter 305, Government Code, provides for registration only with that agency.

Revised Law

Sec. 981.153. PLAN OF OPERATION. (a) The procedures to administer the stamping office are established by a plan of operation approved by the commissioner. The plan of operation establishes the terms of the members of the board of directors of the office.

(b) The stamping office shall submit any amendment to the plan of operation to the commissioner. An amendment to the plan of operation is effective on approval by commissioner order.

(c) If the stamping office fails to submit a suitable amendment to the plan of operation, the commissioner may, after notice and hearing, adopt:

(1) an amendment to the plan of operation; and

(2) any rules necessary or advisable to implement this subchapter.

(d) A rule adopted under Subsection (c) continues until:

(1) modified by the commissioner; or

(2) superseded by an amendment to the plan of operation submitted by the stamping office and approved by the commissioner. (V.T.I.C. Art. 1.14-2, Secs. 6A(c) (part), (d) (part).)

Source Law

(c) . . . The board of directors of the stamping office shall . . . serve terms as established in the plan of operation. . . .

(d) The stamping office shall submit to the State Board of Insurance a plan of operation and any amendments thereto to provide operating procedures for the administration of the stamping office. The plan of operation and any amendments thereto shall become effective upon approval by order of the State Board of Insurance. If the stamping office fails to submit a suitable plan of operation within 180 days following the effective date of this Act or if at any time thereafter the stamping office fails to submit suitable amendments to the plan of operation, the State Board of Insurance shall, after notice and hearing, adopt a plan of operation or amendments to a plan of operation and promulgate such rules as are necessary or advisable to effectuate the provisions of this section. Such rules shall continue in force until modified by the State Board of Insurance or superseded by a plan of operation submitted by the stamping office and approved by the State Board of Insurance. . . .

Revisor's Note

Section 6A(d), V.T.I.C. Article 1.14-2, requires the stamping office to "submit to the State Board of Insurance a plan of operation" and states that "[i]f the stamping office fails to submit a suitable plan of operation within 180 days following the effective date of this Act," the department shall adopt a plan. Section 6A, Article 1.14-2, was added by Section 1, Chapter 561, Acts of the 70th Legislature, Regular Session, 1987, effective August 31, 1987. The revised law omits the quoted language and any additional language in Section 6A(d) relating to the submission or approval of the original plan of operation as unnecessary because it is executed. The revised law retains all language in Section 6A(d) that applies to amendments to the original plan of operation.

Revised Law

Sec. 981.154. POWERS AND DUTIES. (a) The stamping office shall perform its functions under the plan of operation.

(b) The stamping office shall conduct the following activities as provided in the plan of operation:

(1) receive, record, and review each surplus lines insurance contract that a surplus lines agent is required to file with the office;

(2) provide to the commissioner an evaluation of the eligibility of each surplus lines insurance contract and surplus lines insurer;

(3) prepare monthly reports for the commissioner relating to surplus lines insurance obtained during the preceding month in a form prescribed by the commissioner;

(4) prepare reports for the commissioner relating to surplus lines business;

(5) collect from each surplus lines agent a stamping fee for the costs of operations to be paid by the insured and determined by the department in an amount not to exceed three-fourths of one percent of gross premium resulting from surplus lines insurance contracts;

(6) employ persons;

(7) borrow money;

(8) enter into contracts;

(9) perform any other acts to facilitate or encourage compliance with this chapter and rules adopted under this chapter; and

(10) provide any other service incidental or related to an office purpose. (V.T.I.C. Art. 1.14-2, Sec. 6A(b) (part).)

Source Law

(b) The stamping office shall perform its functions under the plan of operation established and approved under Subsection (d) of this section. . . . The stamping office shall conduct the following activities provided in the plan of operation adopted under Subsection (d) of this section: (1) receive, record, and review all surplus lines insurance contracts which surplus lines agents are required to file with the stamping office; (2) provide to the commissioner an evaluation of the eligibility of all surplus lines insurance contracts and surplus lines insurers; (3) prepare monthly reports for the commissioner on surplus lines insurance procured during the preceding month in such form the commissioner may prescribe; prepare and deliver to the commissioner reports of surplus lines business; (4) collect from each surplus lines agent a stamping fee for the costs of operations to be paid by the insured and determined by the State Board of Insurance in an amount not to exceed three-quarters of one percent of gross premium resulting from surplus lines contracts; (5) employ and retain such persons as are necessary to carry out the duties of the stamping office; (6) borrow money as necessary to effect the purposes of the stamping office; (7) enter contracts as necessary to effect the purposes of the stamping office; perform such other acts as will facilitate and encourage compliance with the surplus lines law of this state and rules promulgated thereunder; and (8) provide such other services as are incidental or related to the purposes of the stamping office. . . .

Revisor's Note

Sections 6A(b)(5), (6), and (7), V.T.I.C. Article 1.14-2, refer to duties regarding employing staff, borrowing money, and entering into contracts "necessary" to "carry out" or "effect" the "purposes" or "duties" of the stamping office. The revised law omits the quoted references as unnecessary. By referring to those duties without the qualifying language, the law does not imply that the stamping office may perform unnecessary duties or that it may perform those duties for purposes other than stamping office purposes.

Revised Law

Sec. 981.155. SUPERVISION BY COMMISSIONER. The commissioner shall supervise the stamping office. The stamping office is subject to the applicable provisions of this code and rules of the commissioner. (V.T.I.C. Art. 1.14-2, Sec. 6A(b) (part).)

Source Law

(b) . . . The stamping office shall be supervised by the commissioner and is subject to the applicable provisions of this code and the rules of the State Board of Insurance. . . .

Revised Law

Sec. 981.156. EXAMINATION BY COMMISSIONER. (a) The commissioner shall examine the stamping office at any time the commissioner considers an examination necessary.

(b) The stamping office shall pay the cost of the examination.

(c) During an examination, a stamping office board member, officer, agent, or employee:

(1) may be examined under oath regarding the operation of the office; and

(2) shall make available any book, record, account, document, or agreement relating to the operation of the office. (V.T.I.C. Art. 1.14-2, Sec. 6A(e).)

Source Law

(e) The commissioner shall, at such times as he deems necessary, make or cause to be made an examination of the stamping office. The cost of any such examination shall be paid by the stamping office. During the course of such examination, the directors, officers, agents, and employees of the stamping office may be examined under oath regarding the operation of the stamping office and shall make available all books, records, accounts, documents, and agreements pertaining thereto.

Revised Law

Sec. 981.157. IMMUNITY FROM LIABILITY. A person or entity is not liable for, and a cause of action does not arise out of, an act or omission in performing a power or duty under this subchapter if the person or entity is:

(1) the stamping office or a board member, officer, agent, or employee of the stamping office; or

(2) the department or an employee or representative of the department, including the commissioner. (V.T.I.C. Art. 1.14-2, Sec. 6A(f).)

Source Law

(f) There shall be no liability on the part of and no cause of action of any nature shall arise against the stamping office, its directors, officers, agents, or employees, or the State Board of Insurance, the commissioner of insurance, or employees or representatives of the State Board of Insurance for any action taken or omitted by them in the performance of their powers and duties under this section.

Revised Law

Sec. 981.158. EXEMPTION FROM PUBLIC INFORMATION LAW. (a) An individual surplus lines insurance contract filed with the stamping office is:

(1) confidential; and

(2) not public information under Chapter 552, Government Code.

(b) This section does not prevent access by a state agency to an individual surplus lines insurance contract filed with the stamping office. (V.T.I.C. Art. 1.14-2, Sec. 6A(h).)

Source Law

(h) An individual surplus lines insurance contract filed with the stamping office is confidential and is not a public record under Chapter 552, Government Code. Nothing in this subsection shall prevent access by a state agency to an individual surplus lines insurance contract filed with the stamping office.

Revisor's Note

Section 6A(h), V.T.I.C. Article 1.14-2, refers to a "public record" under Chapter 552, Government Code. Section 1, Chapter 1035, Acts of the 74th Legislature, Regular Session, 1995, changed the heading of Chapter 552, Government Code, from "Open Records" to "Public Information." In addition, Section 2, Chapter 1035, Acts of the 74th Legislature, Regular Session, 1995, deleted references to "public records" and instead referred to "information" throughout Chapter 552. For consistency with those changes, the revised law substitutes "information" for "record."

Revised Law

Sec. 981.159. EXEMPTION FROM LIBRARY AND ARCHIVES LAW. Chapter 441, Government Code, does not apply to the stamping office or its records. (V.T.I.C. Art. 1.14-2, Sec. 6A(g).)

Source Law

(g) The stamping office and the records of the stamping office are not subject to Chapter 441, Government Code.

Revised Law

Sec. 981.160. NO ENFORCEMENT AUTHORITY. This subchapter does not give the stamping office authority to enforce this chapter or Section 12, Article 1.14-2. (V.T.I.C. Art. 1.14-2, Sec. 6A(b) (part).)

Source Law

(b) . . . Nothing in this section shall be construed as giving the stamping office any authority to enforce this article.

[Sections 981.161-981.200 reserved for expansion]

SUBCHAPTER E. SURPLUS LINES AGENTS

Revised Law

Sec. 981.201. DEFINITION. In this subchapter, "managing general agent" means an agent licensed under the Managing General Agents' Licensing Act (Article 21.07-3, Vernon's Texas Insurance Code). (V.T.I.C. Art. 1.14-2, Sec. 2(a)(1) (part); New.)

Source Law

(1) . . . (ii) is a managing general agent (authorized to be licensed and licensed under the Managing General Agents' Licensing Act, Acts, 1967, 60th Legislature, Chapter 727, codified by Vernon as Article 21.07-3) . . . .

Revisor's Note

(1) Section 2(a)(1)(ii), V.T.I.C. Article 1.14-2, refers to a managing general agent "authorized to be licensed and licensed under the Managing General Agents' Licensing Act." The revised law omits "authorized to be licensed" as unnecessary because if the agent is licensed under that act, the agent must also be "authorized to be licensed" under that same act.

(2) The definition of "managing general agent" is derived from Section 2(a)(1), V.T.I.C. Article 1.14-2, and is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 981.202. SURPLUS LINES LICENSE REQUIRED. An agent licensed by this state may not issue or cause to be issued an insurance contract with an eligible surplus lines insurer unless the agent possesses a surplus lines license issued by the department. (V.T.I.C. Art. 1.14-2, Sec. 4(a).)

Source Law

Sec. 4. (a) An agent licensed by the state may not issue or cause to be issued an insurance contract with an eligible surplus lines insurer, unless the agent possesses a current surplus lines license issued by the State Board of Insurance.

Revisor's Note

Section 4(a), V.T.I.C. Article 1.14-2, refers to a "current" surplus lines license. The revised law omits "current" as unnecessary. If a license is not current, no license exists.

Revised Law

Sec. 981.203. QUALIFICATIONS FOR SURPLUS LINES LICENSE; LICENSE TERM. (a) The department may issue a surplus lines license to:

(1) an agent resident in this state who:

(A) is authorized under Article 21.14; or

(B) is a managing general agent; or

(2) a nonresident insurance agent authorized under Article 21.11 who is granted a surplus lines license for the limited purpose of acting on behalf of a purchasing group operating in this state in the placement of liability insurance for a risk located in this state.

(b) The agent must:

(1) pay an application fee set by the commissioner in an amount not to exceed $50;

(2) submit a completed license application on a form approved by the commissioner;

(3) pass an examination under Section 981.205; and

(4) provide proof of financial responsibility under Section 981.206.

(c) Unless the commissioner adopts a system for staggered renewal of licenses under Article 21.01-2:

(1) a surplus lines license, other than an initial license, is valid for a two-year term that expires on December 31; and

(2) the term of an initial license expires on December 31 of the year following the year in which the license is issued. (V.T.I.C. Art. 1.14-2, Secs. 2(a)(1) (part), (2) (part), 3(a) (part), 4(b) (part), (c) (part).)

<u>Source Law</u>

Sec. 2. (a)(1) "Surplus lines agent" (i) is an agent authorized under Article 21.14 . . . , (ii) . . . a managing general agent . . . who complies with the provisions of this Article, . . . or (iii) is a nonresident insurance agent authorized under Article 21.11 and who is granted a surplus lines license for the limited purpose of acting on behalf of a purchasing group operating in this state in the placement of liability insurance for risks located in this state.

(2) Each "surplus lines agent," as a condition of being licensed as a surplus lines agent and as a condition of continuing to be licensed as a surplus lines agent, shall offer proof of financial [solvency and demonstrate capacity in respect of] responsibility [to insureds under policies of surplus lines insurance, or in the alternative show proof of adequate bond and surety in respect of his transactions with insureds under policies of surplus lines insurance] . . . .

Sec. 3. (a) . . .

3. The insurance must be placed through a licensed Texas surplus lines agent resident in this state.

[Sec. 4]

(b) The Texas Department of Insurance may issue a surplus lines license to an agent as defined by Subdivision (1) of Subsection (a) of Section 2 of this article after the agent has:

(1) remitted the application fee set by the Texas Department of Insurance in an amount not to exceed $50;

(2) submitted a completed license application on a form approved by the Texas Department of Insurance; and

(3) passed a qualifying examination . . . .

(c) Unless the State Board of Insurance adopts a system for staggered renewal of licenses, as provided by Article 21.01-2 of this code, each license issued under this section is for a two-year term that expires on December 31; however, the term of the initial licensing period shall expire on December 31 of the year following the year in which the license is issued. . . .

Revised Law

Sec. 981.204. CLASSIFICATION OF SURPLUS LINES AGENTS. The department may classify surplus lines agents and issue a surplus lines license to an agent in accordance with:

(1) a classification created under this section; and

(2) reasonable rules of the commissioner. (V.T.I.C. Art. 1.14-2, Sec. 2(a)(4).)

Source Law

(4) The State Board of Insurance is authorized to classify surplus lines agents and to issue licenses to surplus lines agents in accordance with such classification and as the reasonable rules and regulations of the Board shall prescribe.

Revised Law

Sec. 981.205. EXAMINATION. (a) A surplus lines agent must pass an examination approved by the department.

(b) If the surplus lines agent is a:

(1) general partnership or a registered limited liability partnership, each individual acting as a partner must pass the examination;

(2) corporation, each individual acting as an officer, director, or shareholder of the corporation must pass the examination; or

(3) limited liability company, each individual acting as an officer, manager, or member of the company must pass the examination.

(c) Unless the department accepts under Article 21.01-1 a qualifying examination administered by a testing service, each individual required to be examined must pay a fee before being examined at the time and place for the examination. The commissioner shall set the fee in an amount not to exceed $20.

(d) A new examination fee must be paid before each examination.

(e) An examination fee may not be refunded unless the individual:

(1) not later than 24 hours before the time the examination begins, notifies the commissioner that the individual will not take the examination;

(2) receives the commissioner's permission to not take

the examination; and

(3) does not appear to take the examination. (V.T.I.C. Art. 1.14-2, Secs. 4(b) (part), (h).)

Source Law

[(b) The Texas Department of Insurance may issue a surplus lines license to an agent as defined by Subdivision (1) of Subsection (a) of Section 2 of this article after the agent has:]

. . .

(3) passed a qualifying examination approved by the Texas Department of Insurance. If the agent is a general partnership or a registered limited liability partnership, this examination must be met by each natural person acting as a partner in that partnership. If the agent is a corporation, this examination requirement must be met by each natural person acting as an officer, director, or shareholder of that corporation. If the agent is a limited liability company, this examination requirement must be met by each natural person acting as an officer, manager, and member of that limited liability company.

(h) Unless the State Board of Insurance accepts a qualifying examination administered by a testing service, as provided by Article 21.01-1, Insurance Code, each person required to be examined shall pay a fee before being examined at the time and place for the examination. The State Board of Insurance shall determine the amount of the fee, but the fee may not be more than $20. A new fee must be paid before each examination. A fee paid under this subsection may not be refunded unless the applicant:

(1) gives notice to the State Board of Insurance not later than 24 hours before the time for the beginning of the examination that the applicant will not take the examination;

(2) does not appear to take the examination; and

(3) receives the approval of the State Board of Insurance.

Revised Law

Sec. 981.206. FINANCIAL RESPONSIBILITY. A surplus lines agent must provide proof to the department of:

(1) financial solvency and a demonstrated capacity regarding responsibility to insureds under surplus lines insurance policies; or

(2) an adequate bond and surety regarding transactions with insureds under surplus lines insurance policies, as provided by reasonable rules of the commissioner. (V.T.I.C. Art. 1.14-2, Sec. 2(a)(2) (part).)

Source Law

(2) Each "surplus lines agent," . . . shall offer proof of financial solvency and demonstrate capacity in respect of responsibility to insureds under policies of surplus lines insurance, or in the alternative show proof of adequate bond and surety in respect of his transactions with insureds under policies of surplus lines insurance and as the reasonable rules and regulations of the State Board of Insurance shall provide.

Revised Law

Sec. 981.207. DUPLICATE SURPLUS LINES LICENSE. (a) A surplus lines agent may request a duplicate surplus lines license.

(b) The commissioner must collect a duplicate surplus lines license fee from the surplus lines agent before providing the duplicate to the agent.

(c) The commissioner shall set the fee in an amount not to exceed $20. (V.T.I.C. Art. 1.14-2, Sec. 4(f).)

Source Law

(f) The commissioner of insurance shall collect in advance from an agent who requests a duplicate license a fee not to exceed $20. The State Board of Insurance shall set the amount of the duplicate license fee.

Revised Law

Sec. 981.208. RENEWAL OF SURPLUS LINES LICENSE. On or before the date a surplus lines license expires, the agent may renew the license for a two-year period. To renew the license, the agent must:

(1) file a completed written application on a form prescribed by the commissioner; and

(2) pay the renewal fee in the amount set by the commissioner, not to exceed $50. (V.T.I.C. Art. 1.14-2, Secs. 4(c) (part), (d).)

Source Law

(c) . . . A license may be renewed for periods of two years.

(d) By filing a completed written application in the form prescribed by the State Board of Insurance and paying the nonrefundable renewal fee set by the board in an amount not to exceed $50, an unexpired license may be renewed on or before the expiration date of the license.

Revisor's Note

Section 4(d), V.T.I.C. Article 1.14-2, refers to a "nonrefundable" renewal fee. The revised law omits "nonrefundable" as unnecessary because it duplicates Section 4(g), V.T.I.C. Article 1.14-2, revised as Section 981.209.

Revised Law

Sec. 981.209. FEES. (a) The department shall deposit a fee collected under this subchapter to the credit of the Texas Department of Insurance operating account.

(b) A fee collected under this subchapter is not refundable, except as provided by Section 981.205. (V.T.I.C. Art. 1.14-2, Sec. 4(g).)

Source Law

(g) The board shall deposit all fees in the State Treasury to the credit of the State Board of Insurance operating fund. Such fees are not refundable except as provided by Subsection (h) of this section.

Revisor's Note

Section 4(g), V.T.I.C. Article 1.14-2, states that the department shall "deposit all fees in the State Treasury to the credit of the State Board of Insurance operating fund." Under Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund. The revised law is drafted accordingly.

Revised Law

Sec. 981.210. PLACEMENT OF COVERAGE. A surplus lines agent may not place surplus lines coverage with an insurer unless:

(1) the insurer meets the eligibility requirements of Subchapter B; and

(2) the stamping office provides evidence to the department that the insurer meets those requirements. (V.T.I.C. Art. 1.14-2, Sec. 8(b) (part).)

Source Law

(b) No surplus lines agent shall place any coverage with an insurer unless the insurer has met the eligibility requirements of this section and the stamping office provides evidence that the insurer has met the requirements to the State Board of Insurance. . . .

Revised Law

Sec. 981.211. FINANCIAL CONDITION OF SURPLUS LINES INSURERS. (a) A surplus lines agent must make a reasonable effort to determine the financial condition of an eligible surplus lines insurer before placing insurance with that insurer.

(b) A surplus lines agent may not knowingly place surplus lines insurance with a financially unsound insurer. (V.T.I.C. Art. 1.14-2, Sec. 8(a).)

Source Law

Sec. 8. (a) A surplus lines agent shall not knowingly place surplus lines insurance with financially unsound insurers. The surplus lines agent shall make a reasonable effort to ascertain the financial condition of the eligible surplus lines insurer before placing insurance therewith.

Revised Law

Sec. 981.212. ACCEPTING SURPLUS LINES INSURANCE FROM OTHER AGENTS. (a) A surplus lines agent may originate surplus lines insurance or accept surplus lines insurance from another agent who is licensed to handle the kind of insurance being accepted.

(b) A surplus lines agent who accepts surplus lines insurance from an agent may share a commission with that agent. (V.T.I.C. Art. 1.14-2, Sec. 14.)

Source Law

Sec. 14. A surplus lines agent may originate surplus lines insurance or accept surplus lines insurance from another agent who is licensed to handle the kind of insurance being accepted. A surplus lines agent may share commissions with agents from whom he accepts surplus lines insurance.

Revised Law

Sec. 981.213. FILING CONTRACT WITH STAMPING OFFICE. A surplus lines agent shall report to and file with the stamping office a copy of each surplus lines insurance contract as provided in the stamping office's plan of operation. The department may accept that filing instead of the filings required under Section 981.105. (V.T.I.C. Art. 1.14-2, Sec. 6A(a) (part).)

Source Law

(a) . . . All surplus lines agents shall as a condition of their holding a license as a surplus lines agent in this state report to and file with the stamping office a copy of each surplus lines insurance contract as provided in the plan of operation adopted under Subsection (d) of this section. The board may accept such filing in lieu of the filings required under Subsection (b) of Section 6 of this article.

Revised Law

Sec. 981.214. COMPLIANCE WITH STAMPING OFFICE PLAN OF OPERATION. A surplus lines agent shall comply with the stamping office's plan of operation. (V.T.I.C. Art. 1.14-2, Sec. 6A(d) (part).)

Source Law

(d) . . . All surplus lines agents shall comply with the plan of operation.

Revised Law

Sec. 981.215. SURPLUS LINES AGENT RECORDS. (a) A surplus lines agent shall keep in the agent's office in this state a complete record of each surplus lines contract obtained by the agent, including any of the following, if applicable:

(1) a copy of the daily report;

(2) the amount of the insurance and risks insured against;

(3) a brief general description of the property insured and the location of that property;

(4) the gross premium charged;

(5) the return premium paid;

(6) the rate of premium charged on the different items of property;

(7) the contract terms, including the effective date;

(8) the insured's name and post office address;

(9) the insurer's name and home office address;

(10) the amount collected from the insured; and

(11) any other information required by the commissioner.

(b) The surplus lines agent shall keep the record required by this section open for examination by the department without notice at any time until the third anniversary of the date the surplus lines contract expires or is canceled. (V.T.I.C. Art. 1.14-2, Sec. 15.)

Source Law

Sec. 15. (a) Each surplus lines agent shall keep in his office in this state a full and true record of each surplus lines contract procured by him, including a copy of the daily report, if any, and showing such of the following items as may be applicable:

1. Amount of the insurance and perils insured against;

2. Brief general description of property insured and where located;

3. Gross premium charged;

4. Return premium paid, if any;

5. Rate of premium charged upon the several items of property;

6. Effective date of the contract, and the terms thereof;

7. Name and post office address of the insured;

8. Name and home office address of the insurer;

9. Amount collected from the insured; and

10. Other information as may be required by the State Board of Insurance.

(b) The record shall at all times be open to examination by the State Board of Insurance without notice, and shall be so kept available and open to the State Board of Insurance for three years next following expiration or cancellation of the contract.

Revisor's Note

Section 15(a), V.T.I.C. Article 1.14-2, refers to a "full and true" record. The revised law substitutes "complete" for the quoted language because the latter is synonymous in context and more modern and concise. The absence of "true" does not imply that an agent could maintain an untruthful record and still be in compliance with the law.

Revised Law

Sec. 981.216. ANNUAL REPORT. (a) Before March 1 of each year, a surplus lines agent shall submit a report to the department for the preceding calendar year.

(b) The commissioner shall adopt the form for the annual report.

(c) The annual report must:

(1) demonstrate that the amount of insurance obtained from each eligible surplus lines insurer is only the amount that exceeds the amount obtainable from an authorized insurer; and

(2) include any other information required by the commissioner. (V.T.I.C. Art. 1.14-2, Sec. 16.)

Source Law

Sec. 16. Each surplus lines agent shall, before March 1 in each year, make a report to the Texas Department of Insurance for the preceding calendar year, on the form prescribed by it, of such facts as it requires and including a showing that the amount of insurance procured from such eligible surplus lines insurer or insurers is only the amount in excess of the amount procurable from licensed insurers.

Revised Law

Sec. 981.217. NOTICE TO DEPARTMENT REQUIRED. (a) A surplus lines agent shall notify the department not later than the 30th day after the date any of the following occurs:

(1) balances due for more than 90 days to an eligible surplus lines insurer or for more than 60 days to the agent acting on behalf of the surplus lines insurer exceed $1 million or 10 percent of the insurer's policyholder surplus calculated on December 31 of the preceding year;

(2) balances due for more than 60 days from a managing

general agent or a local recording agent appointed by or reporting to the managing general agent exceed $500,000;

(3) authority to settle claims for an eligible surplus lines insurer is withdrawn;

(4) funds held for an eligible surplus lines insurer for losses are greater than $100,000 more than the amount necessary to pay losses and loss adjustment expenses expected to be paid on behalf of the insurer in the next 60-day period; or

(5) the agent's contract to act on behalf of a surplus lines insurer is canceled or terminated.

(b) The commissioner shall adopt the form to be used under Subsection (a).

(c) A surplus lines agent may comply with the notification requirement under Subsections (a)(1), (2), and (4) by submitting a single annual report if:

(1) the agent or applicable eligible surplus lines insurer routinely operates beyond the limits provided by those subdivisions; and

(2) the commissioner verifies that fact under a procedure adopted by the commissioner. (V.T.I.C. Art. 1.14-2, Sec. 15A.)

Source Law

Sec. 15A. (a) Each surplus lines agent licensed under this article shall notify the State Board of Insurance on forms promulgated by the board not later than the 30th day after the day on which any of the following circumstances occurs:

(1) balances due more than 90 days to a surplus lines insurer or more than 60 days to a surplus lines agent acting on behalf of a surplus lines insurer exceed $1 million or 10 percent of insurer's policyholder surplus calculated on December 31 of the preceding year;

(2) balances due more than 60 days from a local recording agent or managing general agent, appointed by or reporting to the managing general agent exceed $500,000;

(3) authority to settle claims for a surplus lines insurer is withdrawn;

(4) funds held for a surplus lines insurer for losses are greater than $100,000 more than the amount necessary to pay losses and loss adjustment expenses expected to be paid on behalf of the insurer within the next 60-day period; or

(5) the surplus lines agent's contract to act on behalf of a surplus lines insurer is cancelled or terminated.

(b) The requirement to file under Subsections (a)(1), (2), and (4) of this section may be met with a single annual report if the reporting person or entity routinely operates beyond the limits provided by those subsections and the commissioner verifies that fact under procedures adopted by the commissioner.

Revised Law

Sec. 981.218. DEPARTMENT MONITORING OF SURPLUS LINES AGENTS. The department shall monitor the activities of surplus lines agents as necessary to protect the public interest. (V.T.I.C. Art. 1.14-2, Sec. 3A (part).)

Source Law

Sec. 3A. . . . The board shall monitor the activities of surplus lines agents to the extent necessary to protect the public interest.

Revised Law

Sec. 981.219. ADVERTISING. A surplus lines agent may advertise regarding the agent's ability to place surplus lines insurance permitted by this chapter. (V.T.I.C. Art. 1.14-2, Sec. 13.)

Source Law

Sec. 13. Any agent who is granted a surplus lines license in accordance with this Article may bring announcements or statements before the public in respect to his ability to place such surplus lines insurance as may be permitted by this Article.

Revised Law

Sec. 981.220. MANAGING GENERAL AGENTS; LIMITED AUTHORITY OF CERTAIN AGENTS. (a) A managing general agent is not required to hold a local recording agent license to be eligible to receive a surplus lines license.

(b) A surplus lines license granted to a managing general agent who is not also licensed under Article 21.14 is limited to the acceptance of business originating through a licensed local recording agent. The license does not authorize the agent to engage in business directly with the insurance applicant. (V.T.I.C. Art. 1.14-2, Secs. 2(a)(1) (part), (3).)

Source Law

(1) . . . (ii) . . . except it is not necessary that the managing general agent be licensed as a recording agent, or . . . .

(3) Any surplus lines license granted to an agency authorized under the Managing General Agents' Licensing Act, Acts, 1967, 60th Legislature, Chapter 727, that is not also licensed under Article 21.14 of the Insurance Code shall be limited to the acceptance of business originating through a regularly licensed recording agent and shall not authorize such surplus lines agency to transact business directly with the applicant for insurance.

Revisor's Note

Section 2(a)(3), V.T.I.C. Article 1.14-2, refers to a "regularly" licensed recording agent. The revised law omits "regularly" as unnecessary because it is included in the meaning of "licensed."

Revisor's Note
(End of Chapter)

Section 18, V.T.I.C. Article 1.14-2, states that the article does not apply to a person to whom it cannot apply under the Texas or United States Constitution. The revised law omits that provision as unnecessary. Under general principles of constitutional law, a Texas statute could not apply to a person the Texas or United States Constitution does not allow the law to apply to. The omitted law reads:

> Sec. 18. This Article and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

CHAPTER 982. FOREIGN AND ALIEN INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

CHAPTER 982. FOREIGN AND ALIEN INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 982.001. DEFINITIONS. In this chapter:

(1) "Accident insurance company," "health insurance company," "life insurance company," and "United States branch" have the meanings assigned by Section 841.001.

(2) "Alien insurance company" means an insurance company organized under the laws of a foreign country. The term includes an unincorporated insurance company (other than an unincorporated life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company) that is organized under the laws of a foreign country in a form recognized by the department.

(3) "Domestic insurance company" has, in the context of a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company, the meaning assigned by Section 841.001.

(4) "Foreign insurance company" means an insurance company organized under the laws of another state of the United States.

(5) "Insurance company" means a company engaged as a principal in the business of insurance.

(6) "Policyholder" has, in the context of a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company, the meaning assigned by Section 841.001.

(7) "Trusteed asset" means an asset that an authorized alien insurance company is required or permitted by this chapter to deposit with one or more trustees for the security of the company's policyholders in the United States. (V.T.I.C. Art. 3.01, Secs. 1, 2, 3, 4, 5, 6, 7A, 8, 13; Art. 3.27-1, Subsec. (a) (part); Art. 21.43, Secs. 1, 10(a) (part).)

Source Law

Art. 3.01

Sec. 1. A life insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned on the continuance or cessation of human life, or involving an insurance, guaranty, contract or pledge for the payment of endowments or annuities.

Sec. 2. An accident insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned upon the injury, disablement or death of persons resulting from traveling or general accidents by land or water.

Sec. 3. A health insurance company shall be deemed to be a corporation doing business under any charter involving the payment of any amount of money, or other thing of value, conditioned upon loss by reason of disability due to sickness or ill-health.

Sec. 4. When consistent with the context and not obviously used in a different sense, the term "company," or "insurance company," as used herein, includes all corporations engaged as principals in the business of life, accident or health insurance.

Sec. 5. The term "domestic" company, as used herein, designates those life, accident or life and accident, health and accident, or life, health and accident insurance companies incorporated and formed in this State.

Sec. 6. The term "foreign company" means any life, accident or health insurance company organized under the laws of any other state or territory of the United States.

Sec. 7A. The term "alien company" means any life, accident, or health insurance company organized under the laws of any foreign country.

Sec. 8. The "insured" or "policyholder" is the person on whose life a policy of insurance is effected.

Sec. 13. The "United States branch" means:

(a) the business unit through which business is transacted within the United States by an alien insurer;

(b) the assets and liabilities of the insurer within the United States pertaining to such business;

(c) the management powers pertaining to such business and to the assets and liabilities; or

(d) any combination of the foregoing.

Art. 3.27-1. (a) Assets which any authorized alien insurer is required or permitted by this subchapter to deposit with a trustee or trustees for the security of its policyholders in the United States shall be known as "trusteed assets". . . .

Art. 21.43

Sec. 1. In this article:

(a) The term "foreign insurance corporation" means any insurance company other than one subject to provisions of Subchapter B, Chapter 3, of this code organized under the laws of any other state or territory of the United States.

(b) The term "alien insurance corporation" means an insurance company other than one subject to provisions of Subchapter B, Chapter 3, of this code organized under the laws of any foreign country. For the purposes of this article, the term also includes any nonincorporated insurer organized under the laws of any foreign country in a form recognized by the department.

(c) The term "United States branch" means:

(1) the business unit through which business is transacted within the United States by an alien insurer;

(2) the assets and liabilities of the insurer within the United States pertaining to such business;

(3) the management powers pertaining to such business and to the assets and liabilities; or

(4) any combination of the foregoing.

Sec. 10. (a) Assets which any authorized alien insurer is required or permitted by this article to deposit with a trustee or trustees for the security of its policyholders in the United States shall be known as "trusteed assets." . . .

Revisor's Note

(1) V.T.I.C. Article 21.43 by its terms applies to insurance corporations [companies], other than those "subject to Subchapter B, Chapter 3, of" the Insurance Code. See Section 2, V.T.I.C. Article 21.43, revised as Section 982.002 of this chapter. Subchapter B, V.T.I.C. Chapter 3, which is limited in its application to life insurance companies, accident insurance companies, life and accident insurance companies, health and accident insurance companies, and life, health, and accident insurance companies, is revised in this chapter. In most cases, the provisions of Article 21.43 and Subchapter B, Chapter 3, are identical, and those identical provisions are revised in an integrated manner in Subchapters A-E of this chapter.

Section 4, V.T.I.C. Article 3.01, defines "insurance company" to include all companies "engaged as principals in the business of life, accident or health insurance." The revised law omits the reference to "life, accident or health" because this chapter applies not only to companies engaged in life, health, or accident insurance but also to companies engaged in other types of insurance.

(2) Sections 6 and 7A, V.T.I.C. Article 3.01, define "foreign company" and "alien company," respectively. Subsection (a), V.T.I.C. Article 3.27-1, refers to an "alien insurer." Subsequent provisions of Article 3.27-1 also use that term. Similarly, Section 1, V.T.I.C. Article 21.43, defines the terms "foreign insurance corporation" and "alien insurance

corporation." For clarity and consistency, the revised law uses the terms "foreign insurance company" and "alien insurance company."

(3) Section 1(a), V.T.I.C. Article 21.43, refers to a foreign insurance corporation organized under the laws of "any other state or territory of the United States." Throughout this chapter, the revised law omits references to "territory" in this context as unnecessary because Section 311.005, Government Code (Code Construction Act), which applies to the revised law, provides that "state," when referring to a part of the United States, includes any state or territory of the United States.

Revised Law

Sec. 982.002. APPLICABILITY OF CHAPTER. This chapter applies to any insurance company that is organized under the laws of another state or country and that wants to engage in or is engaging in the business of insurance in this state. (V.T.I.C. Art. 3.20; Art. 21.43, Sec. 2.)

Source Law

Art. 3.20. This subchapter applies to any life insurance company, or accident insurance company, or life and accident, or health and accident, or life, health and accident insurance company, incorporated under the laws of any other state, territory or country, desiring to transact the business of such insurance in this State.

[Art. 21.43]

Sec. 2. This article applies to any insurance corporation other than one subject to Subchapter B, Chapter 3, of this code incorporated under the laws of any other state, territory, or country desiring to be licensed to transact the business of insurance in this State.

Revisor's Note

V.T.I.C. Article 3.20 and Section 2, V.T.I.C. Article 21.43, refer to insurance companies "incorporated" under the laws of another jurisdiction. V.T.I.C. Articles 3.01 and 21.43, revised in this chapter, use the term "organized" rather than "incorporated," and the law revised in this section uses the term "organized" for the purpose of consistency.

Revised Law

Sec. 982.003. LIFE INSURANCE COMPANIES WANTING TO LOAN MONEY. A life insurance company that wants to loan money in this state but does not want to engage in the business of life insurance in this state may obtain from the secretary of state a permit to loan money by complying with the laws of this state relating to foreign corporations engaged in loaning money in this state without having to obtain a certificate of authority to engage in the business of life insurance in this state. (V.T.I.C. Art. 3.27.)

Source Law

Art. 3.27. Any life insurance company not desiring to engage in the business of writing life insurance in this State, but desiring to loan its funds in this State, may obtain a permit to do so from the Secretary of State by complying with the laws of this State relating to foreign corporations engaged in loaning money in this State, without being required to secure a certificate of authority to write life insurance in this State.

Revised Law

Sec. 982.004. FINANCIAL STATEMENTS OF FOREIGN OR ALIEN INSURANCE COMPANIES. (a) Each foreign insurance company shall file with the department a statement in the form required by Section 982.101 or 982.102 not later than March 1 of each year.

(b) Each authorized alien insurance company shall file with the department a financial statement in the form required by Section 982.252 not later than March 1 of each year. (V.T.I.C. Art. 3.20-1, Subsec. (b); Art. 3.27-2, Subsec. (a) (part); Art. 21.43, Secs. 4(b), 11(a) (part).)

Source Law

[Art. 3.20-1]

(b) Each foreign company shall be required to file a similar statement not later than March 1 of each year.

Art. 3.27-2. (a) Every authorized alien insurer shall file with the Department a financial statement not later than March 1 of each year . . . .

[Art. 21.43]

[Sec. 4]

(b) Each foreign insurance corporation shall be required to file a statement similar to that required in Subsection (a) not later than March 1 of each year.

Sec. 11. (a) Every authorized alien insurer shall file with the Department a financial statement not later than March 1 of each year . . . .

[Sections 982.005-982.050 reserved for expansion]

SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS

Revised Law

Sec. 982.051. CERTIFICATE OF AUTHORITY REQUIRED FOR LIFE, HEALTH, OR ACCIDENT COMPANIES. A foreign insurance company may not engage in the business of insurance as a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company in this state, except for the lending of money, without first obtaining from the department a certificate of authority that:

(1) shows that the foreign insurance company has fully complied with the laws of this state; and

(2) authorizes the foreign insurance company to engage in the business of insurance in this state. (V.T.I.C. Art. 3.57 (part).)

Source Law

Art. 3.57. No foreign . . . insurance company shall transact any insurance business in this State, other than the lending of money, unless it shall first procure from the Board of Insurance Commissioners a certificate of authority, stating that the laws of this State have been fully complied with by it, and authorizing it to do business in this State. . . .

Revisor's Note

V.T.I.C. Article 3.57 refers to the expiration and annual renewal of a certificate of authority. The revised law omits the reference as repealed. Under Section 1, V.T.I.C. Article 1.14, revised in relevant part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amending Article 1.14, repealed "[a]ll laws and parts of laws in conflict herewith . . . including . . . [Article] 3.57 . . . to the extent that they require periodic renewal of certificates of authority." The omitted law reads:

> Art. 3.57. . . . Such certificate of authority shall expire on the day fixed by the Board under Articles 3.06 and 3.08 of this code and shall be renewed annually so long as the company shall continue to comply with the laws of the State, such renewals to be granted upon the same terms and considerations as the original certificate.

Revised Law

Sec. 982.052. CERTIFICATE OF AUTHORITY REQUIRED FOR OTHER COMPANIES. Except as provided by Chapter 101 or 981, a foreign or alien insurance company, other than a life insurance company, accident insurance company, life and accident insurance company, or life, health, and accident insurance company, may not engage in this state in the business of insuring others against losses without first obtaining from the department a certificate of authority that authorizes the company to engage in that business. (V.T.I.C. Art. 21.43, Sec. 3(a).)

Source Law

[Art. 21.43]

Sec. 3. (a) It shall be unlawful, except as provided in Articles 1.14-1 and 1.14-2 of this code, for any foreign insurance corporation or alien insurance corporation of the type provided for in any chapter of this code to engage in the business of insuring others against losses which may be insured against under the laws of this state without initially procuring a certificate of authority from the commissioner of insurance permitting it to engage in those business activities.

Revisor's Note
(End of Subchapter)

V.T.I.C. Article 3.24-1 in part provides that a certificate of authority continues in full force and effect while the company holding the certificate complies with state law. The revised law omits this provision as unnecessary because V.T.I.C. Article 1.14, revised in part as Chapter 801 of this code, provides that a certificate of authority remains in effect until it is suspended or revoked. The omitted law reads:

> Art. 3.24-1. . . . Such certificate shall continue in full force and effect upon the condition that the company shall continue to comply with the laws of this State.

[Sections 982.053-982.100 reserved for expansion]

SUBCHAPTER C. REQUIREMENTS FOR CERTIFICATE OF AUTHORITY

Revised Law

Sec. 982.101. FILING OF FINANCIAL STATEMENT BY LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANY. A foreign or alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company that wants to engage in the business of insurance in this state shall provide to the department a written or printed statement, under the oath of the president or vice president or under the oath of the treasurer and secretary of the company, that shows:

(1) the company's name and location;

(2) the amount of the company's capital stock;

(3) the amount of the company's paid up capital stock;

(4) the company's assets, including in the following order:

(A) the amount of cash on hand;

(B) the amount of cash held by other persons and the names and residences of those persons;

(C) unencumbered real estate, its location, and its value;

(D) bonds the company owns, the manner in which the bonds are secured, and the rate of interest on the bonds;

(E) debts due the company that are secured by mortgage, a description of the mortgaged property, and the property's market value;

(F) debts due the company that are secured other than by mortgage and a statement of how they are secured;

(G) debts due the company for premiums; and

(H) all other money and securities;

(5) the amount of the company's liabilities and the name of the person or corporation to whom each liability is owed;

(6) losses adjusted and due;

(7) losses adjusted and not due;

(8) losses adjusted;

(9) losses in suspense and the reason for the suspension;

(10) all other claims against the company and a description of each claim; and

(11) any additional facts required by the department to be shown. (V.T.I.C. Art. 3.20-1, Subsec. (a).)

Source Law

Art. 3.20-1. (a) Any foreign or alien life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, incorporated under the laws of any other state, territory or country, desiring to transact the business of such insurance in this State, shall furnish the Texas Department of Insurance with a written or printed statement under oath of the president or vice president, or treasurer and secretary of such company which statement shall show:

1. The name and locality of the company.

2. The amount of its capital stock.

3. The amount of its capital stock paid up.

4. The assets of the company, including: first, the amount of cash on hand and in the hands of other persons, naming such persons and their residence; second, real estate unincumbered, where situated and its value; third, the bonds owned by the company and how they are secured, with the rate of interest thereon; fourth, debts due the company secured by mortgage, describing the property mortgaged and its market value; fifth, debts otherwise secured, stating how secured; sixth, debts for premiums; seventh, all other moneys and securities.

5. Amount of liabilities of the company, stating the

name of the person or corporation to whom liable.

6. Losses adjusted and due.

7. Losses adjusted and not due.

8. Losses adjusted.

9. Losses in suspense and for what cause.

10. All other claims against the company, describing the same.

The Department may require any additional facts to be shown by such annual statement.

Revised Law

Sec. 982.102. FILING OF FINANCIAL STATEMENT BY OTHER INSURANCE COMPANY; EXAMINATION. (a) This section applies only to a foreign or alien insurance company, other than a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company.

(b) A foreign or alien insurance company that wants to engage in the business of insurance in this state shall provide to the department copies of its annual financial statements for the two most recent years. The copies must be certified by the commissioner or other insurance supervising official of the state or country in which the company is organized and incorporated. The department may require that the statement show additional facts as requested by the department.

(c) Before issuing a certificate of authority to engage in the business of insurance in this state to a foreign or alien insurance company, the commissioner shall:

(1) examine the company, at the company's expense, at its principal office in the United States; or

(2) accept a report of an examination made by the insurance department or other insurance supervisory official of another state or government of a foreign country. (V.T.I.C. Art. 21.43, Secs. 4(a), 6.)

Source Law

Sec. 4. (a) Any foreign or alien insurance corporation desiring to transact the business of insurance in this state shall furnish the Texas Department of Insurance with copies of its annual financial statements for the two most recent years, certified by the commissioner or other insurance supervising official of the state or country in which the insurer is organized and incorporated. The Department may require any additional facts to be shown by such annual statement.

Sec. 6. Before issuing a certificate of authority to a foreign or alien insurance corporation to do business in this state, the commissioner shall either make an examination of the insurer at the expense of such insurer at its principal office within the United States or accept a report of an examination made by the insurance department or other insurance supervisory official of any other state or of any government of a foreign country.

Revised Law

Sec. 982.103. FILING OF FINANCIAL STATEMENT BY ALIEN INSURANCE COMPANY. An alien insurance company that wants to engage in the business of insurance in this state shall file a financial statement as provided by Section 982.252. (V.T.I.C. Art. 3.20-1, Subsec. (c); Art. 21.43, Sec. 4(c).)

Source Law

[Art. 3.20-1]

(c) Each alien company shall be required to file a financial statement as provided in Article 3.27-2 of this subchapter.

[Art. 21.43]

[Sec. 4]

(c) Each alien insurance corporation shall be required to file a financial statement as provided in Section 11 of this article.

Revised Law

Sec. 982.104. FILING OF ARTICLES OF INCORPORATION. (a) A foreign or alien insurance company shall file with the statement required by Section 982.101 or 982.102:

(1) a copy of the company's acts or articles of incorporation and any amendments to those acts or articles; and

(2) a copy of the company's bylaws and a statement of the name and residence of each of the company's officers and directors.

(b) The president or the secretary of the company shall certify the documents filed under Subsection (a). (V.T.I.C. Art. 3.21; Art. 21.43, Sec. 5.)

Source Law

Art. 3.21. Any such foreign or alien insurance company shall accompany the statement required in the foregoing article with a certified copy of its acts or articles of incorporation, and all amendments thereto, and a copy of its by-laws, together with the name and residence of each of its officers and directors. The same shall be certified under the hand of the president or secretary of such company.

[Art. 21.43]

Sec. 5. Any foreign or alien insurance corporation shall accompany the statement required in Section 4 of this article with a certified copy of its acts or articles of incorporation, and all amendments thereto, and a copy of its by-laws, together with the name and residence of each of its officers and directors. These documents shall be certified under the hand of the president or secretary of such company.

Revised Law

Sec. 982.105. CAPITAL STOCK AND SURPLUS REQUIREMENTS FOR LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANIES. (a) A foreign or alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company is subject to Sections 841.054, 841.201, 841.204, 841.205, 841.207, 841.301, and 841.302. The department may not issue a certificate of authority to a foreign or alien stock insurance company, and the company may not engage in any business of life, health, or accident insurance in this state, unless the company possesses at least the minimum capital and surplus required for a similar domestic insurance company organized under Chapter 841 in similar circumstances. The minimum capital and surplus must be invested in the same character of investments as required for a domestic insurance company.

(b) The department may not issue a certificate of authority to a foreign or alien mutual insurance company, and the company may not engage in the business of life insurance in this state, unless the company possesses at least the minimum unencumbered surplus required by Chapter 882 for a similar domestic company in similar circumstances. The minimum unencumbered surplus must be invested in the same character of investments as required for a domestic insurance company. (V.T.I.C. Arts. 3.22, 3.27-4 (part).)

Source Law

Art. 3.22. No foreign or alien stock insurance company shall be licensed by the Department or shall transact any such business of insurance in this State unless such company is possessed of not less than the minimum capital and surplus required by this chapter of a similar domestic company in similar circumstances, including the same character of investments for its minimum capital and surplus. No such foreign or alien mutual insurance company shall be licensed by the Department or shall transact any such business of insurance in this State unless such company is possessed of not less than the minimum free surplus required by Chapter 11 of this Code of a similar domestic company in similar circumstances including the same character of investments for its minimum free surplus.

Art. 3.27-4. Articles 3.02 . . . of this code apply to an insurance company subject to this chapter.

Revisor's Note

(1) V.T.I.C. Article 3.22 refers to an insurance company "licensed by the department." Throughout this chapter, the revised law substitutes "certificate of authority" for "license" and "authorized" for "licensed" because those are the terms used throughout this code in relation to an entity's authority to engage in business.

(2) V.T.I.C. Article 3.22 refers to Chapter 3 of the Insurance Code. The pertinent portions of Chapter 3, relating to organization of similar domestic insurance companies subject to appropriate minimum capital and surplus requirements, are revised in Chapter 841. The revised law is drafted accordingly.

(3) V.T.I.C. Article 3.22 refers to a company's "free surplus." Throughout this chapter, the revised law substitutes "unencumbered surplus" for "free surplus" because, in context, the phrases are synonymous and the phrase "unencumbered surplus" is more consistent with modern usage.

(4) V.T.I.C. Article 3.27-4 provides that foreign and alien life, health, and accident insurance companies are subject to V.T.I.C. Article 3.02. Article 3.02, revised in Chapter 841 of this code, establishes requirements for initial formation of a domestic company and for capital and surplus of a domestic insurance company. Because only the capital and surplus requirements of Chapter 841 can have application to a foreign or alien company, the revised law references only those provisions.

Revised Law

Sec. 982.106. CAPITAL STOCK AND SURPLUS REQUIREMENTS FOR OTHER INSURANCE COMPANIES. (a) This section applies only to a foreign or alien insurance company other than a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company.

(b) A foreign or alien insurance company is subject to Sections 822.203, 822.205, 822.210, and 822.212. The department may not authorize a foreign or alien insurance company to engage in the business of insurance in this state unless the company has and maintains the minimum capital and surplus amounts as required by this code for companies organized under this code and engaging in the same kinds of business.

(c) The department may not deny authorization for a foreign or alien insurance company to engage in the business of insurance in this state because all of the company's capital stock has not been fully subscribed and paid for, if:

(1) at least the minimum dollar amount of capital stock of the company required by the laws of this state, which

may be less than all of the company's authorized capital stock, has been subscribed and paid for; and

(2) the company:

(A) has at least the minimum dollar amount of surplus required by the laws of this state for the kinds of business the company seeks to write; and

(B) has fully complied with the laws of the company's domiciliary state or country relating to authorization and issuance of capital stock. (V.T.I.C. Art. 21.43, Sec. 13(a); Art. 21.44, Subsecs. (a), (b) (part).)

Source Law

[Art. 21.43]

Sec. 13. (a) A foreign or alien insurance corporation may not be denied permission to do business in this state on the ground that all of its authorized capital stock has not been fully subscribed and paid for if:

(1) at least the minimum dollar amount of capital stock of the corporation required by the laws of this state (which may be less than all of its authorized capital stock) has been subscribed and paid for;

(2) it has at least the minimum dollar amount of surplus required by the laws of this state for the kinds of business the corporation seeks to write; and

(3) the corporation has fully complied with the laws of its domiciliary state or country relating to authorization and issuance of capital stock.

Art. 21.44. (a) No foreign or alien insurance company subject to the provisions of Article 21.43 of this code shall be permitted to do business within this State unless it shall have and maintain the minimum requirements of this Code as to capital or surplus or both, applicable to companies organized under this Code doing the same kind or kinds of business.

(b) Articles 2.20 . . . of this code apply to an insurance company subject to this article.

Revised Law

Sec. 982.107. APPLICABILITY OF OTHER LAW. Article 21.49-8 applies to a foreign or alien insurance company. (V.T.I.C. Art. 3.27-4 (part); Art. 21.44, Subsec. (b) (part).)

Source Law

Art. 3.27-4. Articles . . . and 21.49-8 of this code apply to an insurance company subject to this subchapter.

[Art. 21.44]

(b) Articles . . . and 21.49-8 of this code apply to an insurance company subject to this article.

Revised Law

Sec. 982.108. DEPOSIT REQUIREMENTS FOR ALIEN INSURANCE COMPANY. An alien insurance company may not engage in the business of insurance in this state without first depositing with the comptroller, for the benefit of the company's policyholders who are citizens or residents of the United States, bonds or securities of the United States or this state in an amount at least equal to:

(1) the minimum capital required to be maintained by a domestic stock insurer authorized to engage in the same kind of insurance; or

(2) one-half the minimum unencumbered surplus required to be maintained by a domestic mutual insurer authorized to engage in the same kind of insurance. (V.T.I.C. Art. 3.23, Subsec. (a); Art. 21.43, Sec. 7(a).)

Source Law

Art. 3.23. (a) No alien insurance company shall transact business in this State, unless it shall first deposit and keep deposited with the comptroller, for the benefit of the policyholders of such company, citizens or residents of the United States, bonds or securities of the United States or the State of Texas in an amount at least equal to the minimum capital required to be maintained by a domestic stock insurer licensed to transact the same kind of insurance, or at least equal to one-half the minimum free surplus required to be maintained by a domestic mutual insurer licensed to transact the same kind of insurance.

[Art. 21.43]

Sec. 7. (a) No alien insurance corporation shall transact business in this State, unless it shall first deposit and keep deposited with the comptroller, for the benefit of the policyholders of such company, citizens, or residents of the United States, bonds or securities of the United States or the State of Texas in an amount at least equal to the minimum capital required to be maintained by a domestic stock insurer licensed to transact the same kind of insurance, or at least equal to one-half the minimum free surplus required to be maintained by a domestic mutual insurer licensed to transact the same kind of insurance.

Revised Law

Sec. 982.109. DURATION OF DEPOSIT BY LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANIES. An alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company shall maintain the deposit required by Section 982.108 for the period that the company has any outstanding liability arising from its insurance transactions in the United States. The deposit is liable to pay the judgments, as decreed by courts, of the company's policyholders in the United States. (V.T.I.C. Art. 3.24.)

Source Law

Art. 3.24. The deposit required by the preceding article shall be held liable to pay the judgments of policyholders of the insurer in the United States, and may be so decreed by the court adjudicating the same. It shall be maintained so long as any liability of the insurer arising out of its insurance transactions in the United States remains outstanding.

Revised Law

Sec. 982.110. DURATION OF DEPOSIT FOR OTHER INSURANCE COMPANIES. An alien insurance company, other than an alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company, shall maintain the deposit required by Section 982.108 for the period that the company has any outstanding liability arising from its insurance transactions in the United States. The deposit is for the exclusive benefit, security, and protection of the company's policyholders in the United States. (V.T.I.C. Art. 21.43, Sec. 8.)

Source Law

Sec. 8. The deposit required by Section 7 of this article shall be for the exclusive benefit, security, and protection of policyholders of the insurer in the United States. It shall be maintained so long as any liability of the insurer arising out of its insurance transactions in the United States remains outstanding.

Revised Law

Sec. 982.111. EXCEPTION TO DEPOSIT REQUIREMENT: TRUSTEED ASSETS. (a) On approval by the commissioner as provided by Subchapter D, instead of making the deposit with the comptroller under Section 982.108, an authorized alien insurance company may deposit bonds or securities of the United States or this state with a trustee or trustees for the security of the company's policyholders in the United States.

(b) An alien insurance company shall maintain the deposit permitted by Subsection (a) as provided by Subchapter D. (V.T.I.C. Art. 3.23, Subsec. (b); Art. 21.43, Sec. 7(b).)

Source Law

[Art. 3.23]

(b) Upon approval of the commissioner in accordance with Article 3.27-1 of this subchapter, a licensed alien insurer may be permitted to deposit assets with a trustee or trustees for the security of its policyholders in the United States in lieu of making the deposit with the comptroller so long as such assets are composed of securities or bonds of the United States or this State and are maintained in accordance with provisions of Article 3.27-1 of this code.

[Art. 21.43]

[Sec. 7]

(b) Upon approval of the commissioner in accordance with Section 10 of this article, a licensed alien insurer may be permitted to deposit assets with a trustee or trustees for the security of its policyholders in the United States in lieu of making the deposit with the comptroller so long as such assets are composed of securities or bonds of the United States or this State and are maintained in accordance with provisions of Section 10 of this article.

Revised Law

Sec. 982.112. EXCEPTION TO DEPOSIT REQUIREMENT: DEPOSIT WITH OFFICER IN ANOTHER STATE. (a) The deposit required under Section 982.108 is not required in this state if the deposit required by that section has been made in any state of the United States, under the laws of that state, in a manner that secures equally the policyholders of the company who are citizens and residents of the United States.

(b) An alien insurance company that desires to meet the requirements of Section 982.108 as provided by Subsection (a) shall file with the department a certificate of the deposit. The certificate must be signed by and under the seal of the officer of the state with whom the deposit was made. (V.T.I.C. Art. 3.26; Art. 21.43, Sec. 7(c).)

Source Law

Art. 3.26. If the deposit required by Article 3.23 of this code has been made in any State of the United States, under the laws of such State, in such manner as to secure equally all the policyholders of such Company who are citizens and residents of the United States, then no deposit shall be required in this State; but a certificate of such deposit under the hand and seal of the officer of such other State with whom the same has been made shall be filed with the Department.

[Art. 21.43]
[Sec. 7]

(c) If the deposit required by Subsection (a) of this section has been made in any State of the United States, under the laws of such State, in such manner as to secure equally all the policyholders of such Company who are citizens and residents of the United States, then no deposit shall be required in this State; but a certificate of such deposit under the hand and seal of the officer of such other State with whom the same has been made shall be filed with the Department.

Revised Law

Sec. 982.113. ISSUANCE OF CERTIFICATE OF AUTHORITY TO LIFE, HEALTH, OR ACCIDENT INSURANCE COMPANY. (a) The commissioner shall file in the commissioner's office the documents delivered to the department under this subchapter and shall issue to a foreign or alien life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company a certificate of authority to engage in this state in the kind of business specified in the documents if:

(1) the company has complied with the requirements of this chapter and any other requirement imposed on the company by law; and

(2) the company's operational history demonstrates that the expanded operation of the company in this state or its operations outside this state will not create a condition that might be hazardous to the company's policyholders or creditors or to the public.

(b) The operational history of a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company under Subsection (a)(2) must be reviewed in conjunction with:

(1) the company's loss experience;

(2) the kinds and nature of risks insured by the company;

(3) the company's financial condition and its ownership;

(4) the company's proposed method of operation;

(5) the company's affiliations;

(6) the company's investments;

(7) the company's contracts, if any, leading to contingent liability or agreements in respect to guaranty and surety, other than insurance; and

(8) the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid, and required policy reserve

increases. (V.T.I.C. Art. 3.24-1 (part).)

Source Law

Art. 3.24-1. When a foreign or alien company has complied with the requirements of this Subchapter and all other requirements imposed on such company by law and has paid any deposit imposed by law, and the operational history of the company when reviewed in conjunction with its loss experience, the kinds and nature of risks insured, the financial condition of the company and its ownership, its proposed method of operation, its affiliations, its investments, any contracts leading to contingent liability or agreements in respect to guaranty and surety, other than insurance, and the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid and required policy reserve increases, indicates a condition such that the expanded operation of the company in this State or its operations outside this State will not create a condition which might be hazardous to its policyholders, creditors or the general public, the Commissioner shall file in the office the documents delivered to him and shall issue to the company a certificate of authority to transact in this State the kind or kinds of business specified therein. . . .

Revisor's Note

V.T.I.C. Article 3.24-1 provides that the commissioner of insurance shall issue a certificate of authority to a foreign or alien company that has complied with the requirements of Subchapter B, V.T.I.C. Chapter 3, revised in this chapter, "and has paid any deposit imposed by law." The revised law omits the quoted language as unnecessary. The only statutory requirement that a foreign or alien company pay a deposit to transact the business of life, health, or accident insurance in this state is contained in V.T.I.C. Article 3.23, revised as Section 982.108, and as such is included in the requirements of this chapter.

[Sections 982.114-982.200 reserved for expansion]

SUBCHAPTER D. TRUSTEED ASSETS OF ALIEN INSURANCE COMPANIES

Revised Law

Sec. 982.201. DEED OF TRUST: GENERAL PROVISIONS. (a) A deed of trust relating to the trusteed assets of an authorized alien insurance company and all amendments to the deed of trust are effective only if approved by the commissioner.

(b) The deed of trust must contain provisions that:

(1) vest legal title to trusteed assets in the trustee or trustees and the trustees' lawfully appointed successors, in trust for the security of the policyholders of the alien insurance company in the United States;

(2) provide for substitution of a new trustee or

trustees, subject to the commissioner's approval, in the event of vacancy by death, resignation, or other incapacity; and

(3) require that the trustee or trustees continuously maintain a record sufficient to identify the trusteed assets.

(c) The deed of trust may provide that income, earnings, dividends, or interest accumulations of the trusteed assets may be paid over to the United States manager of the alien insurance company on request.

(d) The deed of trust and all amendments to the deed of trust must be authenticated in the form and manner prescribed by the commissioner. (V.T.I.C. Art. 3.27-1, Subsecs. (b), (f), (g); Art. 21.43, Secs. 10(b), (f), (g).)

Source Law

[Art. 3.27-1]

(b) The deed of trust and all amendments to the deed of trust of such insurer shall be authenticated in such form and manner as prescribed by the commissioner, and shall not be effective unless approved by the commissioner.

(f) The deed of trust shall contain provisions which:

(1) vest legal title to trusteed assets in the trustee or trustees and successors lawfully appointed, in trust for the security of all policyholders of the alien insurer within the United States;

(2) provide for substitution of a new trustee or trustees in the event of vacancy by death, resignation, or other incapacity, subject to the approval of the commissioner; and

(3) require that the trustee or trustees shall continuously maintain a record at all times sufficient to identify the assets of the trust fund.

(g) The deed of trust may provide that income, earnings, dividends, or interest accumulations of the assets of the fund may be paid over to the United States manager of the alien insurer, upon request.

[Art. 21.43]

[Sec. 10]

(b) The deed of trust and all amendments to the deed of trust of such insurer shall be authenticated in such form and manner as prescribed by the commissioner and shall not be effective unless approved by the commissioner.

(f) The deed of trust shall contain provisions which:

(1) vest legal title to trusteed assets in the trustee or trustees and successors lawfully appointed, in trust for the security of all policyholders of the alien insurer within the United States;

(2) provide for substitution of a new trustee or trustees in the event of vacancy by death, resignation, or other incapacity, subject to the approval of the commissioner; and

(3) require that the trustee or trustees shall continuously maintain a record at all times sufficient to identify the assets of the trust fund.

(g) The deed of trust may provide that income, earnings, dividends, or interest accumulations of the assets of the fund may be paid over to the United States manager of the alien insurer, upon request.

Revised Law

Sec. 982.202. DEED OF TRUST: APPROVAL BY COMMISSIONER. (a) The commissioner shall approve a deed of trust relating to the trusteed assets of an alien insurance company if the commissioner determines:

(1) the deed of trust or its amendments are sufficient in form and conform with applicable law;

(2) the trustee or trustees are eligible to serve in that capacity; and

(3) the deed of trust is adequate to protect the interests of the beneficiaries of the trust.

(b) If, after notice and hearing, the commissioner determines that a requisite for approval of a deed of trust under Subsection (a) does not exist, the commissioner may withdraw approval.

(c) The commissioner may approve a change in any deed of trust that in the commissioner's judgment is in the best interests of the policyholders of the alien insurance company in the United States. (V.T.I.C. Art. 3.27-1, Subsecs. (c), (d), (e); Art. 21.43, Secs. 10(c), (d), (e).)

Source Law

[Art. 3.27-1]

(c) The commissioner shall give approval to a deed of trust if the commissioner finds:

(1) the deed of trust or its amendments are sufficient in form and are in conformity with applicable law;

(2) the trustee or trustees are eligible as such; and

(3) the deed of trust is adequate to protect the interests of the beneficiaries of the trust.

(d) If after notice and hearing the commissioner finds that the requisites for approval of the deed of trust no longer exist, the commissioner may withdraw approval.

(e) The commissioner may from time to time approve modifications of, or variations in any deed of trust, which in the commissioner's judgment are in the best interests of the policyholders of the alien insurer within the United States.

[Art. 21.43]
[Sec. 10]

(c) The commissioner shall give approval to a deed of trust if the commissioner finds:

(1) the deed of trust or its amendments are sufficient in form and are in conformity with applicable law;

(2) the trustee or trustees are eligible as such; and

(3) the deed of trust is adequate to protect the interests of the beneficiaries of the trust.

(d) If after notice and hearing the commissioner finds that the requisites for approval of the deed of trust no longer exist, the commissioner may withdraw approval.

(e) The commissioner may from time to time approve modifications of, or variations in any deed of trust, which in the commissioner's judgment are in the best interests of the policyholders of the alien insurer corporation within the United States.

Revisor's Note

Subsection (e), V.T.I.C. Article 3.27-1, and Section 10(e), V.T.I.C. Article 21.43, provide that the commissioner of insurance may "from time to time" approve modifications of or variations in a deed of trust. The revised law omits "from time to time" as unnecessary in this context. The authority to take an action includes the authority to take that action "from time to time."

Revised Law

Sec. 982.203. LOCATION OF TRUSTEED ASSETS. (a) The trusteed assets of an alien insurance company shall be kept continuously in the United States.

(b) The trusteed assets of an alien insurance company that enters the United States through this state shall be kept continuously in this state. (V.T.I.C. Art. 3.27-1, Subsec. (a) (part); Art. 21.43, Sec. 10(a) (part).)

Source Law

Art. 3.27-1. (a) . . . All trusteed assets shall be continuously kept within the United States, and the trusteed assets of an alien insurer entering the United States through this State shall be kept continuously in this State.

[Art. 21.43]

Sec. 10. (a) . . . All trusteed assets shall be continuously kept within the United States, and the trusteed assets of an alien insurer entering the United States through this State shall be kept continuously in this State.

Revised Law

Sec. 982.204. WITHDRAWAL OF TRUSTEED ASSETS. (a) The deed of trust relating to the trusteed assets of an alien insurance company must provide that the trustee or trustees may not make or permit a withdrawal of assets, other than as specified by Section 982.201(c), without the commissioner's prior written approval except to:

(1) make deposits required by law in any state for the security or benefit of the policyholders of the company in the United States;

(2) substitute other assets permitted by law and at least equal in value to those withdrawn, subject to Subsection (b); or

(3) transfer the assets to an official liquidator or rehabilitator in accordance with an order of a court of competent jurisdiction.

(b) A withdrawal under Subsection (a)(2) may be made only on the specific written direction of the United States manager or an assistant United States manager when authorized and acting under general or specific written authority previously given or delegated by the board of directors.

(c) On withdrawal of trusteed assets deposited in another state in which the alien insurance company is authorized to engage in the business of insurance:

(1) the deed of trust may require similar written approval of the insurance supervising official of that state instead of the commissioner's approval as provided by Subsection (a); and

(2) if approval under Subdivision (1) is required, the company shall notify the commissioner in writing of the nature and extent of the withdrawal. (V.T.I.C. Art. 3.27-1, Subsecs. (h), (i); Art. 21.43, Secs. 10(h), (i).)

Source Law

[Art. 3.27-1]

(h) The deed of trust shall provide that no withdrawal of assets, other than income as specified in Subsection (g) of this article, shall be made or permitted by the trustee or trustees without prior written approval of the commissioner, except:

(1) to make deposits required by law in any state for the security or benefit of all policyholders of the alien insurer in the United States;

(2) to substitute other assets permitted by law and at least equal in value to those withdrawn upon the specific written direction of the United States manager or an assistant United States manager when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the board of directors; or

(3) to transfer such assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

(i) Upon withdrawal of trusteed assets deposited in another state in which the insurer is authorized to do business, the deed of trust may require similar written approval of the insurance supervising official of that state in lieu of approval of the commissioner as provided in Subsection (h) of this article. In all such instances, the alien insurer shall notify the commissioner in writing of the nature and extent of the withdrawal.

[Art. 21.43]
[Sec. 10]

(h) The deed of trust shall provide that no withdrawal of assets, other than income as specified in Subsection (g) of this section, shall be made or permitted by the trustee or trustees without prior written approval of the commissioner, except:

(1) to make deposits required by law in any state for the security or benefit of all policyholders of the alien insurer in the United States;

(2) to substitute other assets permitted by law and at least equal in value to those withdrawn, upon the specific written direction of the United States manager or an assistant United States manager when duly empowered and acting pursuant to either general or specific written authority previously given or delegated by the board of directors; or

(3) to transfer such assets to an official liquidator or rehabilitator pursuant to an order of a court of competent jurisdiction.

(i) Upon withdrawal of trusteed assets deposited in another state in which the insurer is authorized to do business, the deed of trust may require similar written approval of the insurance supervising official of that state in lieu of approval of the commissioner as provided in Subsection (h) of this section. In all such instances, the alien insurer shall notify the commissioner in writing of the nature and extent of the withdrawal.

[Sections 982.205-982.250 reserved for expansion]

SUBCHAPTER E. TRUSTEED SURPLUS OF ALIEN INSURANCE COMPANIES

Revised Law

Sec. 982.251. TRUSTEED SURPLUS OF ALIEN INSURANCE COMPANY. The total value of an alien insurance company's general state deposits and trusteed assets less the total net amount of all the company's liabilities and reserves in the United States, as determined in accordance with Section 982.252, is the company's trusteed surplus in the United States. (V.T.I.C. Art. 3.27-2, Subsec. (e) (part); Art. 21.43, Sec. 11(e) (part).)

Source Law

[Art. 3.27-2]

(e) The aggregate value of the insurer's general state deposits and trusteed assets less the aggregate net amount of all its liabilities and reserves in the United States as determined in accordance with this section shall be known as its "trusteed" surplus in the United States. . . .

[Art. 21.43]

[Sec. 11]

(e) The aggregate value of the insurer's general state deposits and trusteed assets less the aggregate net amount of all its liabilities and reserves in the United States as determined in accordance with this section shall be known as its "trusteed" surplus in the United States. . . .

Revised Law

Sec. 982.252. FORM AND CONTENTS OF FINANCIAL STATEMENT OF ALIEN INSURANCE COMPANY. (a) A financial statement required to be filed by an alien insurance company under Section 982.004 must be on a form prescribed by the commissioner and must show, as of the preceding December 31:

(1) the company's general deposits of assets in the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of the company's policyholders in the United States;

(2) the company's special deposits of assets in the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of the company's policyholders in a particular state;

(3) the company's trusteed assets in the United States held for the exclusive benefit, security, and protection of the company's policyholders in the United States;

(4) the company's reserves and other liabilities arising out of policies or obligations issued, assumed, or incurred in the United States; and

(5) any further information as determined necessary to implement this section.

(b) In addition to the requirements under Subsection (a), a financial statement filed by an alien life insurance company must show the amount of the company's policy loans to policyholders in the United States, not exceeding the amount of the legal reserve required on each policy.

(c) In determining the net amount of an alien insurance company's liabilities in the United States, the company may deduct:

(1) reinsurance on losses with insurers qualifying for credit, less unpaid reinsurance premiums, with a schedule showing by company the amount deducted; and

(2) unearned premiums on agents' balances or uncollected premiums not more than 90 days past due.

(d) Any liability on an asset not considered in the statement may be applied against that asset.

(e) A special state deposit held for the exclusive benefit of policyholders of a particular state may be allowed as an offset against the alien insurance company's liabilities in that state only.

(f) The statement may include accrued interest at the date of the statement on assets deposited with states and trustees if the interest is collected by the states or trustees.

(g) The United States manager, attorney-in-fact, or authorized assistant United States manager of the alien insurance company shall sign and verify the statement. The United States trustee or trustees shall certify the items of securities and other property held under deeds of trust.

(h) The commissioner may at any time and for any period determined necessary require additional statements of the kind required by this section. (V.T.I.C. Art. 3.27-2, Subsecs. (a) (part), (b), (c), (d), (f); Art. 21.43, Secs. 11(a) (part), (b), (c), (d), (f).)

Source Law

Art. 3.27-2. (a) [Every authorized alien insurer shall file with the Department a financial statement not later than March 1 of each year] on a form prescribed by the commissioner showing at last year end the following:

(1) all its general deposits of assets within the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of its policyholders within the United States;

(2) all its special deposits of assets within the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of its policyholders within a particular state;

(3) all its trusteed assets within the United States held by a trustee or trustees for the exclusive benefit, security, and protection of all its policyholders within the United States;

(4) the amount of its policy loans to policyholders within the United States, not exceeding the amount of the legal reserve required on each such policy;

(5) all its reserves and other liabilities arising out of policies or obligations issued, assumed or incurred in the

United States; and

(6) such further information as determined necessary to implement provisions of this article.

(b) In determining the net amount of an alien insurer's liabilities in the United States, a deduction may be made for the following:

(1) reinsurance on losses with insurers qualifying for credit, less unpaid reinsurance premiums, with a schedule showing by company the amount deducted; and

(2) unearned premiums on agents' balances or uncollected premiums not more than 90 days past due. Any liability on an asset not considered in the statement may be applied against such asset.

(c) No credit shall be allowed in the statement for any special state deposit held for the exclusive benefit of policyholders of any particular state except as an offset against the liabilities of the alien insurer in that state.

(d) The accrued interest at the date of the statement on assets deposited with states and trustees shall be allowed in the statement where the interest is collected by the states or trustees.

(f) The trusteed surplus statement shall be signed and verified by the United States manager, attorney-in-fact, or a duly empowered assistant United States manager of the alien insurer. The items of securities and other property held under trust deeds shall be certified to by the United States trustee or trustees. The commissioner may at any time and for any time period determined necessary require further statements of the same kind.

[Art. 21.43]

Sec. 11. (a) [Every authorized alien insurer shall file with the Department a financial statement not later than March 1 of each year] on a form prescribed by the commissioner showing at last year end the following:

(1) all its general deposits of assets within the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of its policyholders within the United States;

(2) all its special deposits of assets within the United States deposited with officers of any state in trust for the exclusive benefit, security, and protection of its policyholders within a particular state;

(3) all its trusteed assets within the United States held by a trustee or trustees for the exclusive benefit, security, and protection of all its policyholders within the United States;

(4) all its reserves and other liabilities arising out of policies or obligations issued, assumed, or incurred in the United States; and

(5) such further information as determined necessary to implement provisions of this section.

(b) In determining the net amount of an alien insurer's liabilities in the United States, a deduction may be made for the following:

(1) reinsurance on losses with insurers qualifying for credit, less unpaid reinsurance premiums, with a schedule showing by company the amount deducted; and

(2) unearned premiums on agents' balances or uncollected premiums not more than 90 days past due. Any liability on an asset not considered in the statement may be applied against such asset.

(c) No credit shall be allowed in the statement for any special state deposit held for the exclusive benefit of policyholders of any particular state except as an offset against the liabilities of the alien insurer in that state.

(d) The accrued interest at the date of the statement on assets deposited with states and trustees shall be allowed in the statement where the interest is collected by the states or trustees.

(f) The trusteed surplus statement shall be signed and verified by the United States manager, attorney-in-fact, or a duly empowered assistant United States manager of the alien insurer. The items of securities and other property held under trust deeds shall be certified to by the United States trustee or trustees. The commissioner may at any time and for any time period determined necessary require further statements of the same kind.

Revisor's Note

Subsection (a)(3), V.T.I.C. Article 3.27-2, and Section 11(a)(3), V.T.I.C. Article 21.43, refer to "trusteed assets . . . held by a trustee or trustees." The revised law omits "held by a trustee or trustees" as unnecessary because that concept is included within the definition of "trusteed asset" under Subsection (a), V.T.I.C. Article 3.27-1, and Section 10(a), V.T.I.C. Article 21.43, revised as Section 982.001(7).

Revised Law

Sec. 982.253. IMPAIRMENT OF TRUSTEED SURPLUS. (a) If the commissioner determines from a statement filed under Section 982.252 or any report that an alien insurance company's trusteed surplus is less than the greater of the minimum capital required of, or the minimum surplus required to be maintained by, a domestic insurance company authorized to engage in the same kinds of insurance, the commissioner shall:

(1) determine the amount of the impairment; and

(2) order the company, through its United States manager or attorney, to eliminate the impairment within the period designated by the commissioner.

(b) The period for eliminating an impairment under Subsection (a) must end not later than the 90th day after the date the order is served.

(c) The commissioner may also by order revoke or suspend an alien insurance company's certificate of authority or prohibit the company from issuing new policies in the United States while an impairment under Subsection (a) exists. (V.T.I.C. Art. 3.27-2, Subsec. (e) (part); Art. 21.43, Sec. 11(e) (part).)

Source Law

[Art. 3.27-2]

(e) . . . Whenever it appears to the commissioner from any such statement or any report that an alien insurer's trusteed surplus is reduced below the greater of minimum capital required of, or the minimum surplus required to be maintained by, a domestic insurer licensed to transact the same kinds of insurance, the commissioner shall determine the amount of the impairment and order the insurer, through its United States manager or attorney, to eliminate the impairment within such period as the commissioner designates, not more than 90 days from service of the order. The commissioner may also by order revoke or suspend the insurer's license or prohibit it from issuing new policies in the United States while the impairment exists. . . .

[Art. 21.43]

[Sec. 11]

(e) . . . Whenever it appears to the commissioner from any such statement or any report that an alien insurer's trusteed surplus is reduced below the greater of minimum capital required of, or the minimum surplus required to be maintained by, a domestic insurer licensed to transact the same kinds of insurance, the commissioner shall determine the amount of the impairment and order the insurer, through its United States manager or attorney, to eliminate the impairment within such period as the commissioner designates, not more than 90 days from service of the order. The commissioner may also by order revoke or suspend the insurer's license or prohibit it from issuing new policies in the United States while the impairment exists. . . .

Revised Law

Sec. 982.254. FAILURE TO ELIMINATE IMPAIRMENT OF TRUSTEED SURPLUS. If an alien insurance company has not satisfied the commissioner at the end of the designated period under Section

982.253(a) that the impairment has been eliminated, the commissioner may proceed against the company as provided by Article 21.28-A as an insurance company whose further transaction of the business of insurance in the United States will be hazardous to its policyholders in the United States. (V.T.I.C. Art. 3.27-2, Subsec. (e) (part); Art. 21.43, Sec. 11(e) (part).)

Source Law

[Art. 3.27-2]

(e) . . . If at the expiration of the designated period has not satisfied the commissioner that the impairment has been eliminated, the commissioner may proceed against such insurer pursuant to the provisions of Article 21.28-A of this code as an insurer whose further transaction of the business of insurance in the United States will be hazardous to its policyholders in the United States.

[Art. 21.43]

Sec. 11. . . .

(e) . . . If at the expiration of the designated period has not satisfied the commissioner that the impairment has been eliminated, the commissioner may proceed against such insurer pursuant to the provisions of Article 21.28-A of this code as an insurer whose further transaction of the business of insurance in the United States will be hazardous to its policyholders in the United States.

Revised Law

Sec. 982.255. EXAMINATION OF ALIEN INSURANCE COMPANY. (a) The books, records, accounting, and verification relating to an authorized alien insurance company's trusteed assets are subject to examination by the department or the department's appointed representative at the United States branch office of the company, in the same manner and to the same extent that applies under Articles 1.15 and 1.16 to domestic and foreign insurance companies authorized to engage in the same kind of insurance.

(b) The books, records, and accounting for trusteed assets of an alien insurance company that enters the United States through this state shall be maintained in English in the company's branch office in this state. (V.T.I.C. Art. 3.27-3; Art. 21.43, Sec. 12.)

Source Law

Art. 3.27-3. (a) The books, records, accounting, and verification pertaining to the trusteed assets of any authorized alien insurer are subject to examination by the Department or its duly appointed representative at the United States branch office of such insurer, in the same manner and to the same extent that applies under Articles 1.15 and 1.16 of this code to domestic and foreign insurers licensed to transact the same kind of insurance.

(b) The books, records, and accounting for trusteed assets shall be kept and maintained, in English, in the Texas branch office of any alien insurer entering the United States through this State.

[Art. 21.43]

Sec. 12. (a) The books, records, accounting, and verification pertaining to the trusteed assets of any authorized alien insurer are subject to examination by the Department or its duly appointed representative at the United States branch office of such insurer in the same manner and to the same extent that applies under Articles 1.15 and 1.16 of this code to domestic and foreign insurers licensed to transact the same kind of insurance.

(b) The books, records, and accounting for trusteed assets shall be kept and maintained, in English, in the Texas branch office of any alien insurer entering the United States through this State.

[Sections 982.256-982.300 reserved for expansion]

SUBCHAPTER F. PROVISIONS APPLICABLE TO CERTAIN COMPANIES

Revised Law

Sec. 982.301. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a foreign or alien insurance company that is not a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company. (New.)

Revisor's Note

As noted in Revisor's Note (1) to Section 982.001, Subchapters A-E integrate identical provisions of V.T.I.C. Article 21.43 and Subchapter B, V.T.I.C. Chapter 3. Article 21.43 does contain several provisions that are not contained in Subchapter B, Chapter 3, and those provisions are revised in this subchapter. This section is added to clarify that the provisions of this subchapter apply only to a foreign or alien insurance company that is not a life insurance company, accident insurance company, life and accident insurance company, health and accident insurance company, or life, health, and accident insurance company.

Revised Law

Sec. 982.302. REINSURANCE NOT PROHIBITED. This chapter does not prohibit a foreign insurance company from:

(1) reinsuring a domestic insurance company; or

(2) locating in this state, if the company does not directly insure persons domiciled in this state or insure against

risks located in this state. (V.T.I.C. Art. 21.43, Sec. 3(b).)

Source Law

(b) This article does not prohibit a foreign insurer from reinsuring a domestic insurer or prohibit the location in Texas of a company that does not directly insure either persons domiciled or other risks located in this state.

Revised Law

Sec. 982.303. TEXAS LAW ACCEPTED. A foreign or alien insurance company that issues a contract or policy in this state is considered to have agreed to comply with this code as a prerequisite to engaging in the business of insurance in this state. (V.T.I.C. Art. 21.43, Sec. 9.)

Source Law

Sec. 9. The provisions of this code are conditions on which foreign or alien insurance corporations are permitted to do the business of insurance in this state, and any of the foreign or alien corporations engaged in issuing contracts or policies in this state are deemed to have agreed to fully comply with these provisions as a prerequisite to the right to engage in business in this state.

Revised Law

Sec. 982.304. SAME OR DECEPTIVELY SIMILAR NAME. A foreign or alien insurance company may not be denied permission to engage in the business of insurance in this state because the name of the company is the same as or deceptively similar to the name of a domestic corporation existing under the laws of this state or of another foreign or alien insurance company authorized to engage in the business of insurance in this state if the company desiring to engage in the business of insurance in this state:

(1) files with the department and with any county clerk as provided by Section 36.10 or 36.11, Business & Commerce Code, an assumed name certificate stating a name permitted under the laws of this state; and

(2) does not engage in any business in this state except under the assumed name. (V.T.I.C. Art. 21.43, Sec. 13(c).)

Source Law

(c) A foreign or alien insurance corporation subject to this code may not be denied permission to do business in this state because the name of the corporation is the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or of any foreign or alien corporation authorized to transact business in this state if the foreign or alien insurance corporation:

(1) files an assumed name certificate setting forth a name permitted under the laws of this state with the Texas Department of Insurance and with any county clerks as provided by Section 36.10 or 36.11, Business & Commerce Code; and

(2) does not transact or conduct any business in this state except under the assumed name.

Revised Law

Sec. 982.305. LIMITATION ON ACTIONS IN OTHER STATE COURTS. An action involving a contract entered into in this state between a foreign or alien insurance company and a resident of this state may not be brought in or transferred to a court in another state without the consent of the resident of this state. (V.T.I.C. Art. 21.43, Sec. 13(d).)

Source Law

(d) No action on or involving any contract entered into in this state between an insurance corporation and a resident of this state shall be commenced in or transferred to a court in another state without the consent of the resident of this state.

Revised Law

Sec. 982.306. DEPOSIT FOR FOREIGN CASUALTY COMPANY NOT REQUIRED. (a) The department may not require a foreign casualty insurance company to make or maintain the deposit required of a domestic casualty insurance company by Section 861.252 if a similar deposit has been made in any state of the United States, under the laws of that state, in a manner that secures equally all policyholders of the company who are citizens and residents of the United States.

(b) A certificate of the deposit under the signature and seal of the officer of the other state with whom the deposit is made must be filed with the department. (V.T.I.C. Art. 21.43, Sec. 13(b).)

Source Law

(b) A foreign casualty insurer may not be required to make or maintain the deposit required of domestic casualty insurers by Article 8.05 of this code if a similar deposit has been made in any state of the United States, under the laws of that state, in a manner that secures equally all the policyholders of the company who are citizens and residents of the United States. A certificate of the deposit under the signature and seal of the officer of the other state with whom the deposit is made must be filed with the department.

Revisor's Note
(End of Subchapter)

Section 16, V.T.I.C. Article 1.10, requires the commissioner of insurance to "admit into this State [foreign] mutual insurance companies engaged in cyclone, tornado, hail and storm insurance . . . and which have Two Million ($2,000,000.00) Dollars assets in excess of liabilities." The revised law omits this section as duplicative of V.T.I.C. Article 2.02, revised in pertinent part as Section 822.054 of this code, which requires a company engaged in the business of insurance, other than life, health, or accident insurance, to have not "less than $1 million capital and $1 million surplus." That requirement applies to a foreign mutual insurance company by virtue of V.T.I.C. Article 21.44(a), revised as Section 982.106 of this chapter. The omitted law reads:

> Art. 1.10. [In addition to the other duties required of the department, the department shall perform duties as follows:]
>
> . . .
>
> 16. Admit Mutual Companies. The Commissioner shall admit into this State mutual insurance companies engaged in cyclone, tornado, hail and storm insurance which are organized under the laws of other states and which have Two Million ($2,000,000.00) Dollars assets in excess of liabilities.

CHAPTER 983. REDOMESTICATION OF
INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

[Sections 983.003-983.050 reserved for expansion]

SUBCHAPTER B. REDOMESTICATION PROCESS

[Sections 983.058-983.100 reserved for expansion]

SUBCHAPTER C. EFFECT OF REDOMESTICATION

CHAPTER 983. REDOMESTICATION OF INSURERS AND HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 983.001. DEFINITION. In this chapter, "redomestication" means a change in domicile of an insurer or health maintenance organization by merger, consolidation, or another legal method. (V.T.I.C. Art. 1.38, Secs. (c) (part), (d) (part).)

Source Law

(c) [Any foreign insurer or health maintenance organization . . . may] . . . change its domicile by merger, consolidation, redomestication, or other lawful method . . . .

(d) . . . [any insurer or health maintenance organization] redomesticates its corporate domicile . . . by merger, consolidation, redomestication, or other lawful method . . . .

Revisor's Note

(1) Section (c), V.T.I.C. Article 1.38, refers to a change in domicile "by . . . redomestication." Section (d), V.T.I.C. Article 1.38, refers to an insurer or health maintenance organization that redomesticates its domicile "by . . . redomestication." The revised law omits the quoted language as duplicative because it is clear from the context of V.T.I.C. Article 1.38 that a legal change in domicile of an insurer or health maintenance organization is necessarily a redomestication.

(2) The definition of "redomestication" is added to the revised law for drafting convenience and to eliminate frequent, unnecessary repetition of the substance of the definition.

Revised Law

Sec. 983.002. RULES. The commissioner may adopt rules as necessary to implement this chapter. (V.T.I.C. Art. 1.38, Sec. (g).)

Source Law

(g) The Board may promulgate and adopt such rules and regulations as it deems necessary to carry out the stated purposes of this article.

Revisor's Note

(1) Section (g), V.T.I.C. Article 1.38, refers to "the Board," meaning the State Board of Insurance. Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and transferred its functions to the commissioner of

insurance and the Texas Department of Insurance. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and the Texas Department of Insurance, respectively. Throughout this chapter, references to the State Board of Insurance have been changed appropriately.

(2) Section (g), V.T.I.C. Article 1.38, refers to "rules and regulations." The reference to "regulations" is omitted from the revised law because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation. That definition applies to the revised law.

[Sections 983.003-983.050 reserved for expansion]

SUBCHAPTER B. REDOMESTICATION PROCESS

Revised Law

Sec. 983.051. REDOMESTICATION: FOREIGN TO DOMESTIC. (a) An insurer or health maintenance organization that is organized under the laws of another state and authorized to write insurance or provide a health care plan in this state may redomesticate to this state if:

(1) the entity amends or restates its articles of incorporation to comply with each requirement of this code relating to the organization and authorization of a domestic entity of the same type; and

(2) the commissioner approves the redomestication.

(b) An insurer or health maintenance organization that redomesticates under this section is:

(1) considered to be domiciled in this state; and

(2) entitled to a certificate of authority to engage in the business of insurance or the business of a health maintenance organization in this state as a domestic insurer or health maintenance organization, as applicable, without interruption of its authority to engage in business in this state. (V.T.I.C. Art. 1.38, Sec. (a).)

Source Law

Art. 1.38. (a) Any insurer or health maintenance organization which is organized under the laws of any other state and which is authorized to do business in this state for the purpose of writing insurance or providing a health care plan may become a domestic insurer or health maintenance organization, respectively, domiciled in this state on the approval of the commissioner of insurance by amending or restating its articles of incorporation to comply with all of the requirements of this code relative to the organization and licensing of a domestic insurer or health maintenance organization, respectively, of the same type. The redomesticated insurer or health maintenance organization shall be deemed to be domiciled in this state and shall be entitled to like certificates and licenses to transact business in this state, without interruption of its licenses in this state, as a domestic insurer or health maintenance organization, respectively, and shall be subject to the authority and jurisdiction of this state.

Revisor's Note

(1) Section (a), V.T.I.C. Article 1.38, authorizes a foreign insurer or health maintenance organization to "become a domestic insurer or health maintenance organization . . . domiciled in this state." The revised law substitutes "redomesticate to this state" for the quoted language for consistency of terminology within this chapter. Similar changes using "redomesticate" and "redomestication" are made throughout this chapter.

(2) Section (a), V.T.I.C. Article 1.38, states that a redomesticated insurer or health maintenance organization is entitled to "like certificates and licenses to transact business in this state." In this section, the revised law omits "licenses" and throughout the revision, where appropriate, the revised law substitutes "certificate of authority" or "authorization" for "license," "licensing," or "certificates" because a certificate of authority is the document that authorizes an insurer or health maintenance organization to engage in the business of insurance or the business of a health maintenance organization in Texas.

(3) Section (a), V.T.I.C. Article 1.38, states that an insurer or health maintenance organization that redomesticates to become a domestic insurer or health maintenance organization is "subject to the authority and jurisdiction of this state." The revised law omits the quoted language as unnecessary because a domestic insurer or health maintenance organization is subject to state authority and jurisdiction without an express statement in law to that effect.

Revised Law

Sec. 983.052. REDOMESTICATION: DOMESTIC TO FOREIGN. (a) An insurer or health maintenance organization that is organized under the laws of this state and authorized to write insurance or provide a health care plan in another state may redomesticate to that other state if the commissioner and the supervising regulatory official of the proposed state of domicile approve the redomestication.

(b) On the effective date of redomestication, the entity:

(1) ceases to be a domestic insurer or health maintenance organization, as applicable; and

(2) is a qualified foreign insurer or health maintenance organization, as applicable, in this state without interruption of its authority to engage in the business of insurance or the business of a health maintenance organization in

this state.

(c) The commissioner may approve a proposed redomestication under this section unless the commissioner determines that:

(1) the proposed redomestication would not be in the interest of this state's policyholders or enrollees; or

(2) the entity cannot qualify for a certificate of authority in this state as a foreign insurer or health maintenance organization, as applicable. (V.T.I.C. Art. 1.38, Sec. (b).)

Source Law

(b) Any domestic insurer or health maintenance organization organized under the laws of this state may change its domicile to any other state in which it is authorized to transact the business of insurance or provide a health care plan on the approval of the commissioner of insurance and the supervising regulatory official of the new domiciliary state and, on such approval, shall cease to be a domestic insurer or health maintenance organization, respectively, but shall be admitted to this state as a qualified foreign insurer or health maintenance organization, respectively, without interruption of its licenses in this state, at the effective date of the redomestication. The commissioner of insurance may approve any such proposed redomestication unless it is determined that such change is not in the interest of the policyholders or enrollees of this state or that such domestic insurer or health maintenance organization cannot qualify for license in this state as a foreign insurer or health maintenance organization, respectively.

Revisor's Note

Section (b), V.T.I.C. Article 1.38, refers to a "domestic insurer or health maintenance organization organized under the laws of this state." The revised law omits the reference to "domestic" as duplicative because an insurer or health maintenance organization that is "organized under the laws of this state" is necessarily "domestic."

Revised Law

Sec. 983.053. REDOMESTICATION: FOREIGN TO FOREIGN. (a) An insurer or health maintenance organization that is organized under the laws of another state and authorized to engage in the business of insurance or the business of a health maintenance organization in this state may redomesticate to another foreign state without interruption of its authority to engage in business in this state as a foreign insurer or health maintenance organization, as applicable, if:

(1) the entity:

(A) amends or restates its articles of incorporation as required by law; and

(B) provides proper notice to the commissioner; and

(2) the commissioner:

(A) determines that:

(i) the proposed redomestication would not, on the effective date of redomestication, result in a reduction in the amount of the entity's capital or surplus below the amount required for authorization as a foreign insurer or health maintenance organization, as applicable;

(ii) there would not be a material change in the lines of insurance to be written or health care plan provided by the entity;

(iii) the proposed redomestication has been approved by the supervising regulatory officials of both the current and proposed state of domicile;

(iv) the proposed redomestication would not be detrimental to the interest of the insurer's policyholders or the health maintenance organization's enrollees in this state; and

(v) the proposed redomestication is not related to a change in the control of the entity, unless the commissioner has given prior approval to the change in control; and

(B) approves the redomestication.

(b) Subsection (a)(2)(A)(v) does not apply if the redomesticating insurer or health maintenance organization is to become a parent, subsidiary, or affiliate of a qualified insurer or health maintenance organization, as applicable, that has held a certificate of authority in this state for at least seven years before the date of the redomestication. (V.T.I.C. Art. 1.38, Sec. (c) (part).)

<u>Source Law</u>

(c) Any foreign insurer or health maintenance organization organized under the laws of any other state and admitted to transact business in this state may, on proper notice to and approval by the commissioner of insurance, change its domicile . . . to another foreign state without interruption of its licenses in this state as a foreign insurer or health maintenance organization, respectively, by amendment or restatement of its articles of incorporation as required by law and if the commissioner of insurance determines that:

(1) the change in domicile does not result in a reduction of either the capital or surplus of the insurer or the health maintenance organization below the requirements for admission as a foreign insurer or health maintenance organization, respectively, at the effective date of redomestication;

(2) there is no material change in the lines of insurance to be written or health care plan provided by the insurer or health maintenance organization, respectively;

(3) the change in domicile of the insurer or health maintenance organization has been approved by the supervising regulatory officials of both the former and new state of domicile;

(4) the change of domicile is not detrimental to the interest of the insurer's policyholders or the health maintenance organization's enrollees in this state; and

(5) the redomestication is not related to a change in the control of the insurer or health maintenance organization, unless the commissioner of insurance has given prior approval to such change in control; provided, however, that this provision shall not apply if the redomesticating insurer or health maintenance organization is to become a parent, subsidiary, or affiliate of a qualified insurer or health maintenance organization that has held a certificate of authority in this state for at least seven years prior thereto.

Revisor's Note

Section (c), V.T.I.C. Article 1.38, refers to a "foreign insurer or health maintenance organization organized under the laws of any other state." The revised law omits the reference to "foreign" as duplicative because an insurer or health maintenance organization that is "organized under the laws of any other state" is necessarily "foreign."

Revised Law

Sec. 983.054. NOTICE AND FILING REQUIRED. An insurer or health maintenance organization shall:

(1) notify the commissioner of the details of a proposed redomestication; and

(2) promptly file with the commissioner any amendments to its corporate documents filed or required to be filed with the commissioner. (V.T.I.C. Art. 1.38, Sec. (f) (part).)

Source Law

(f) Every such redomesticating insurer or health maintenance organization shall notify the commissioner of insurance of the details of the proposed change and redomestication and shall file promptly with the commissioner of insurance any amendments to its corporate documents as are filed or required to be filed with the commissioner of insurance. . . .

Revisor's Note

Section (f), V.T.I.C. Article 1.38, refers to notification of a proposed "change and redomestication." The reference to "change" is omitted from the revised law as unnecessary because, in context, "change" is included within the meaning of "redomestication."

Revised Law

Sec. 983.055. FORMS OF INSURANCE POLICY OR EVIDENCE OF COVERAGE. (a) A redomesticated insurer or health maintenance organization shall file with the commissioner a new insurance policy or evidence of coverage form, or an endorsement to an approved policy or evidence of coverage form, that implements the redomestication.

(b) The insurer or health maintenance organization, under conditions approved by the commissioner and with an appropriate endorsement, may continue to use an insurance policy or evidence of coverage form that was approved before the redomestication. (V.T.I.C. Art. 1.38, Sec. (d) (part).)

Source Law

(d) . . . Every such redomesticated insurer or health maintenance organization shall file either an endorsement or new policy or evidence of coverage forms with the commissioner of insurance giving effect to the change of domicile. Such redomesticated insurer or health maintenance organization may use the existing approved policy or evidence of coverage forms of the redomesticating insurer or health maintenance organization with appropriate endorsements under such conditions as approved by the commissioner of insurance.

Revised Law

Sec. 983.056. OUTSTANDING INSURANCE POLICY OR EVIDENCE OF COVERAGE: CHANGE OF NAME. A redomesticating insurer or health maintenance organization that changes its name shall endorse each outstanding insurance policy or evidence of coverage with the new name. (V.T.I.C. Art. 1.38, Sec. (d) (part).)

Source Law

(d) . . . In the event of a change in such insurer's or health maintenance organization's name, all outstanding policies of insurance or evidence of coverage shall be endorsed with the new name. . . .

Revised Law

Sec. 983.057. ISSUANCE OF AMENDED CERTIFICATE OF AUTHORITY. The commissioner shall issue an amended certificate of authority on approval of a redomestication. (V.T.I.C. Art. 1.38, Sec. (f) (part).)

Source Law

(f) . . . On approval of the redomestication the commissioner of insurance will issue an amended certificate of authority.

[Sections 983.058-983.100 reserved for expansion]

SUBCHAPTER C. EFFECT OF REDOMESTICATION

Revised Law

Sec. 983.101. CONTINUATION OF BUSINESS. (a) If a redomesticating insurer or health maintenance organization remains qualified to engage in the business of insurance or the business of a health maintenance organization in this state, the following continue in effect after redomestication:

(1) the approved agents' appointments and licenses;

(2) the approved insurance policy forms and provider contracts;

(3) the authorized premium rates;

(4) the quality of care certificates; and

(5) any other relevant item that exists on the effective date of the redomestication.

(b) Each outstanding insurance policy, evidence of coverage, provider contract, or quality of care certificate of a redomesticating insurer or health maintenance organization continues in effect after redomestication. (V.T.I.C. Art. 1.38, Sec. (d) (part).)

Source Law

(d) The approved agents' appointments and licenses, the approved policy forms and provider contracts, the current authorized premium rates, the quality of care certificates, and other relevant items which are in existence at the effective date any insurer or health maintenance organization redomesticates its corporate domicile to this or any other state . . . shall continue in full force and effect on such redomestication if such insurer or health maintenance organization remains duly qualified to transact the business of insurance or the business of a health maintenance organization, respectively, in this state. All outstanding policies, evidence of coverage, provider contracts, or quality of care certificates of any redomesticating insurer or health maintenance organization shall remain in full force and effect in the redomesticated insurer or health maintenance organization, respectively. . . .

Revised Law

Sec. 983.102. EFFECT ON ADMITTED ASSETS. Except as provided by other law, the admitted assets of a redomesticating insurer or health maintenance organization that qualify, on the effective date of the redomestication, as admitted assets under this code continue to qualify as admitted assets after the redomestication. (V.T.I.C. Art. 1.38, Sec. (e).)

Source Law

(e) The admitted assets of the redomesticating insurer or health maintenance organization which qualify as admitted assets under the appropriate section of this code as of the effective date of the redomestication will continue to qualify as admitted assets after the redomestication, subject to the provisions of the appropriate laws in effect at the time of redomestication or any changes to such laws thereafter.

Revisor's Note

Section (e), V.T.I.C. Article 1.38, refers to the provisions of the appropriate laws in effect at the time of redomestication "or any changes to such laws thereafter." The revised law omits the quoted language because under Section 311.027, Government Code (Code Construction Act), unless expressly provided otherwise, a reference to a law applies to all reenactments, revisions, or amendments of the law.

CHAPTER 984. MEXICAN CASUALTY INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 984.204. AUTHORITY TO REVOKE OR SUSPEND CERTIFICATE OF AUTHORITY 1389

CHAPTER 984. MEXICAN CASUALTY INSURANCE COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Revised Law

Sec. 984.001. AUTHORITY OF MEXICAN CASUALTY INSURANCE COMPANIES. (a) An insurance company that complies with this chapter may issue an insurance policy described by Subsection (b) as a Mexican casualty insurance company if the company is:

(1) organized under the laws of the United Mexican States or any state of that nation; and

(2) authorized to write insurance policies described by Subsection (b) by those laws, the company's charter or articles of association, and a license that is in effect and that is issued by the appropriate insurance regulatory authority of the United Mexican States or any state of that nation.

(b) A Mexican casualty insurance company described by Subsection (a) may issue in this state an insurance policy only if the policy:

(1) provides automobile coverage or accident or other casualty insurance coverage on a person or personal property; and

(2) is in effect only while the person or property covered by the policy is within the boundaries of the United Mexican States. (V.T.I.C. Art. 8.24 (intro) (part).)

Source Law

Art. 8.24. Any insurance carrier lawfully organized under the laws of the Republic of Mexico, or under the laws of any state thereof, and duly authorized by such laws and by its charter or articles of association and by current license of the appropriate insurance regulatory authority of such Republic or any state thereof to underwrite risks of the kinds and in the circumstances hereinafter mentioned, may issue in the State of Texas, . . . policies of insurance affording any and all kinds of automobile coverage, accident insurance and/or other casualty coverage, upon persons and/or personal property, to be in force only while such persons and/or personal property shall be physically within the boundaries of the Republic of Mexico, by complying with the following requirements: . . . .

Revisor's Note

(1) V.T.I.C. Article 8.24 refers to an "insurance carrier . . . organized under the laws of the Republic of Mexico, or under the laws of any state thereof" and that meets certain other criteria. In this section and throughout this chapter, the revised law refers to an insurance carrier that issues policies under this chapter as a "Mexican casualty insurance company" because that is the term by which those companies are generally

known, as indicated by the heading to the article revised in this chapter and by references to those companies in other statutes. The revised law also replaces references to "carrier" with "company" for consistency of terms used throughout this code, and replaces references to "Republic of Mexico" with "United Mexican States," the official name of that nation.

(2) V.T.I.C. Article 8.24 refers to a Mexican casualty insurance company that is "lawfully" organized. The revised law omits the reference to "lawfully" because it does not add to the clear meaning of the law. A company that is not "lawfully" organized is not organized in this context.

Revised Law

Sec. 984.002. AUTHORIZED AGENT REQUIRED. (a) A Mexican casualty insurance company may engage in the business of insurance in this state only through a resident agent in this state who:

(1) has the company's written authorization to engage in the business of insurance for the company; and

(2) is licensed by the department under Article 21.14.

(b) The agent's license must specifically authorize the agent to write for Mexican casualty insurance companies insurance coverage authorized by this chapter. (V.T.I.C. Art. 8.24, Subsec. (h).)

Source Law

(h) It shall underwrite business in Texas only through its resident Texas agents thereunto duly authorized by it in writing and duly licensed by such department under the provisions of Article 21.14 of this code, as the same now exists or as it may be amended hereafter, and the license issued to such Texas agents shall specially authorize them to write for such foreign carriers complying herewith the risks authorized hereby.

Revisor's Note

Subsection (h), V.T.I.C. Article 8.24, refers to "Article 21.14 of this code, as the same now exists or as it may be amended hereafter." The revised law omits the phrase "as the same now exists or as it may be amended hereafter" as unnecessary because under Section 311.027, Government Code (Code Construction Act), unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

[Sections 984.003-984.050 reserved for expansion]

SUBCHAPTER B. AUTHORITY TO ENGAGE IN BUSINESS IN THIS STATE

Revised Law

Sec. 984.051. CERTIFICATE OF AUTHORITY REQUIRED. A Mexican casualty insurance company must hold a certificate of authority to engage in the business of insurance under this chapter.

(V.T.I.C. Art. 8.24 (intro) (part).)

Source Law

Art. 8.24. [Any insurance carrier lawfully organized under the laws of the Republic of Mexico . . . may issue in the state of Texas,] under license of the department, [policies of insurance] . . . .

Revisor's Note

V.T.I.C. Article 8.24 authorizes Mexican casualty insurance companies to issue insurance policies in this state "under license of the department." In this section and throughout this chapter, the revised law substitutes "certificate of authority" for "license" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in the business of insurance. In addition, a specific reference to the department is unnecessary because the department is the only entity that issues certificates of authority to engage in the business of insurance under this chapter.

Revised Law

Sec. 984.052. APPLICATION. (a) To issue insurance policies under this chapter, a Mexican casualty insurance company must file with the department an application for a certificate of authority under this chapter.

(b) The application must be:

(1) in writing;

(2) accompanied by a correct English translation of the company's charter and bylaws; and

(3) certified by:

(A) two of the company's principal officers; and

(B) the insurance regulatory officials under whose supervision the company operates in the United Mexican States.

(c) Before the department issues a certificate of authority under this chapter to a Mexican casualty insurance company, the company must file with the department:

(1) a photostatic copy of any license held by the company to engage in the business of insurance in the United Mexican States;

(2) a copy of the company's most recent financial reports or statements; and

(3) a copy of the most recent examination reports of the company's affairs and financial condition by the insurance regulatory authorities under which the company operates in the United Mexican States. (V.T.I.C. Art. 8.24, Subsecs. (a), (b) (part).)

Source Law

(a) Such insurance carrier shall file with the department a written application for certificate to do business in this State, accompanied by a correct English translation of its charter and by-laws, duly certified by two of its principal officers and by the insurance regulatory officials under whose supervision it operates in the Republic of Mexico.

(b) Before admission, . . ., such carrier shall also file with such department a photostatic copy of its current license or licenses to operate in the Republic of Mexico, and shall file a copy of its latest financial reports or statements, and of the latest examination reports of its affairs and financial condition by the insurance regulatory authorities under which it operates in Mexico.

Revisor's Note

(1) Subsection (b), V.T.I.C. Article 8.24, requires a Mexican casualty insurance company to file certain items "[b]efore admission." For clarity and consistency of terminology used throughout this chapter, the revised law substitutes "[b]efore the department issues a certificate of authority under this chapter" for "[b]efore admission."

(2) Subsection (b), V.T.I.C. Article 8.24, refers to a "current license or licenses." The revised law omits the reference to "current" because it does not add to the clear meaning of the law. A license that is not current is not a license.

[Sections 984.053-984.100 reserved for expansion]

SUBCHAPTER C. DEPOSIT WITH COMPTROLLER

Revised Law

Sec. 984.101. DEPOSIT WITH COMPTROLLER REQUIRED. (a) A Mexican casualty insurance company shall deposit with the comptroller at least $25,000 in:

(1) United States currency; or

(2) securities that are:

(A) eligible for other casualty insurance companies authorized to engage in the business of insurance in this state; and

(B) approved by the department.

(b) The deposit shall be used to pay any lawful claim or final judgment against the company, including any claim or judgment for tax due to this state and any policy claim or other debt or obligation incurred in the course of the company's operations as provided by this chapter.

(c) The company shall periodically deposit additional currency or securities described by Subsection (a) as necessary to maintain a minimum total deposit of $25,000. (V.T.I.C.

Art. 8.24, Subsec. (c) (part).)

Source Law

(c) Such carrier shall deposit with the comptroller at least Twenty-five Thousand ($25,000.00) Dollars in lawful money of the United States or in securities eligible for other casualty insurers licensed in Texas and approved by such department, which deposit shall be liable for all lawful claims and final judgments against such insurance carrier, including taxes due the State of Texas, and policy claims and other debts and obligations incurred in the course of operations hereunder as provided herein, and such deposit shall be kept replenished from time to time with like cash or approved securities to maintain a minimum total deposit of Twenty-five Thousand ($25,000.00) Dollars. . . .

Revisor's Note

Subsection (c), V.T.I.C. Article 8.24, refers to "lawful money of the United States." For clarity, the revised law substitutes "United States currency" for the quoted phrase.

Revised Law

Sec. 984.102. PAYMENTS FROM DEPOSIT. On approval of the department, the comptroller shall pay from the deposit required under this subchapter any unsatisfied final judgment obtained against the Mexican casualty insurance company in a court of this state based on substituted service as authorized by Chapter 804. (V.T.I.C. Art. 8.24, Subsec. (d).)

Source Law

(d) The comptroller, upon the approval of the department, shall pay from the deposit required herein any unsatisfied final judgment obtained against such carrier in any court of competent jurisdiction in Texas based upon such substituted service as authorized by Article 1.36 of this code.

Revisor's Note

Subsection (d), V.T.I.C. Article 8.24, refers to a "court of competent jurisdiction." The revised law omits "of competent jurisdiction" as unnecessary because the general laws of civil jurisdiction determine which courts have jurisdiction over the matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts.

Revised Law

Sec. 984.103. RETURN OF DEPOSIT. With the approval of the department, the comptroller shall return the deposit required under this subchapter, or the unencumbered balance of the deposit, to the Mexican casualty insurance company on:

(1) the company's withdrawal from the business of insurance in this state; and

(2) a showing to the department that:

(A) each policy written by the company in this state has expired or been canceled; and

(B) each claim or obligation of the company on a policy written in this state that constitutes a lawful charge against the deposit has been satisfied. (V.T.I.C. Art. 8.24, Subsec. (c) (part).)

Source Law

(c) . . . Such deposit or the unencumbered balance thereof shall be returned to such carrier with approval of such department upon withdrawing from the business authorized hereby and upon a showing to such department that all of its policies written in Texas hereunder have expired or have been canceled and that all of its claims and obligations upon policies written in this State which would constitute lawful charges against such deposits have been satisfied.

[Sections 984.104-984.150 reserved for expansion]

SUBCHAPTER D. TAXES AND CHARGES; REPORTS

Revised Law

Sec. 984.151. PREMIUM TAX. (a) A Mexican casualty insurance company shall pay to this state an annual premium tax based solely on the company's gross premium receipts from insurance policies issued by the company in this state that cover resident citizens of this state or property or risks principally domiciled or located in this state, as shown by reports made to the department each year.

(b) The company shall pay the tax at the same percentage rate and in the same manner that is required of other insurance companies authorized to write accident and casualty coverage in this state. (V.T.I.C. Art. 8.24, Subsec. (e) (part).)

Source Law

(e) Such carrier shall pay the State of Texas annually a premium or occupation tax based solely upon its gross premium receipts from insurance policies issued by it in Texas which cover resident citizens of Texas or property or risks principally domiciled or located in this State, as shown by reports made to the department each year, upon the same percentage rate, and in the same manner, as other licensed insurance carriers in Texas writing accident and casualty coverage. . . .

Revisor's Note

Subsection (e), V.T.I.C. Article 8.24, refers to a "premium or occupation tax" based on "gross premium receipts." Throughout this chapter, the revised law substitutes the phrase "premium tax" because that phrase most accurately describes the tax and is most consistent with terminology used throughout the code.

Revised Law

Sec. 984.152. OTHER TAXES AND CHARGES. In addition to paying a premium tax as required by Section 984.151, a Mexican casualty insurance company shall pay any other maintenance fee, charge, or tax that is required of other insurance companies authorized to write accident and casualty coverage in this state on the same basis as is required of those companies. (V.T.I.C. Art. 8.24, Subsec. (e) (part).)

Source Law

(e) . . . Each such carrier likewise shall pay such other maintenance fees, charges and taxes and upon the same basis as other licensed insurance carriers writing accident and casualty coverage in Texas are required by law to pay; and . . . .

Revised Law

Sec. 984.153. REPORTS. A Mexican casualty insurance company shall make the same reports that other insurance companies authorized to write accident and casualty coverage in this state are required to make. The company shall make the reports on forms adopted by the department. (V.T.I.C. Art. 8.24, Subsec. (e) (part).)

Source Law

(e) . . . Each such carrier . . . shall make the same reports as are required of such other insurance carriers, but in such adapted forms as may be prescribed by the department for such purposes.

[Sections 984.154-984.200 reserved for expansion]

SUBCHAPTER E. REGULATION AND ENFORCEMENT

Revised Law

Sec. 984.201. AGREEMENT TO COMPLY WITH CHAPTER. A Mexican casualty insurance company shall file in English a document executed by the company's officials expressly accepting the terms of this chapter and agreeing that the department may revoke, suspend, or refuse to grant a certificate of authority under this chapter on a determination by the commissioner that the company:

(1) is insolvent or in hazardous financial condition; or

(2) has violated an applicable law of this state or of the company's home jurisdiction. (V.T.I.C. Art. 8.24, Subsec. (g).)

Source Law

(g) Such carrier shall file in English a document executed by its officials expressly accepting the terms of this article and agreeing that such department may at any time in its lawful discretion revoke, suspend or refuse to grant or renew the license of such department to such carrier to conduct in Texas the business hereby authorized, upon a determination by the Commissioner of Insurance that it is insolvent or in hazardous financial condition, or that it has violated any applicable law of this State or of its home jurisdiction.

Revisor's Note

(1) Subsection (g), V.T.I.C. Article 8.24, requires a Mexican casualty insurance company to file with the department a document in which the company agrees that the department "may at any time in its lawful discretion revoke, suspend or refuse to grant or renew" the company's certificate of authority to engage in the business of insurance in this state. The revised law omits the reference to "at any time in its lawful discretion" because a general grant of authority to take action includes the authority to take that action at any time the action may legally be taken.

(2) Subsection (g), V.T.I.C. Article 8.24, provides that the department may refuse to renew a certificate of authority in certain circumstances. The revised law omits the reference to the renewal of a certificate of authority as repealed. Under Section 1, V.T.I.C. Article 1.14, revised in pertinent part as Section 801.053, a certificate of authority is valid until it is suspended or revoked. Section 2, Chapter 194, Acts of the 56th Legislature, Regular Session, 1959, amending Article 1.14, repealed "[a]ll laws and parts of laws in conflict herewith . . . to the extent that they require periodic renewal of certificates of authority."

(3) Subsection (g), V.T.I.C. Article 8.24, refers to the "Commissioner of Insurance." Chapter 31, Insurance Code, defines "commissioner" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance. The revised law is drafted accordingly.

Revised Law

Sec. 984.202. ANNUAL STATEMENT. A Mexican casualty insurance company shall file annually with the department each of the items listed in Section 984.052(c). (V.T.I.C. Art. 8.24, Subsec. (b) (part).)

Source Law

(b) [Before admission,] and annually thereafter[, such carrier shall also file with such department a photostatic copy of its current license or licenses to operate in the Republic of Mexico, and shall file a copy of its latest financial reports or statements, and of the latest examination reports of its affairs and financial condition by the insurance regulatory authorities under which it operates in Mexico].

Revised Law

Sec. 984.203. AUTHORITY TO CONDUCT EXAMINATION. The department may examine at any time the affairs and condition and any books or records of a Mexican casualty insurance company, at the company's expense, to determine the company's:

(1) financial condition and solvency; and

(2) compliance with the applicable laws of this state and of the company's home jurisdiction. (V.T.I.C. Art. 8.24, Subsec. (f).)

Source Law

(f) Such department shall have the authority to examine at any or all times, at the expense of such carrier, the affairs and condition and all books and records of such carrier for the purpose of ascertaining its financial condition and solvency, and its compliance with the applicable laws of this State and of its home jurisdiction.

Revised Law

Sec. 984.204. AUTHORITY TO REVOKE OR SUSPEND CERTIFICATE OF AUTHORITY. The commissioner may revoke or suspend a Mexican casualty insurance company's certificate of authority under this chapter if the commissioner, after notice and an opportunity for a hearing, determines that the company, with neglect and wilful disregard, systematically failed to comply with obligations derived from insurance policies issued in this state and the laws applicable to those policies. (V.T.I.C. Art. 8.24, Subsec. (i) (part).)

Source Law

(i) The department shall have authority to suspend or revoke the certificate of authority of any insurance carrier authorized to do business in Texas under this Article, if the State Board of Insurance, after notice and opportunity for hearing, shall find that such carrier has systematically, with neglect and with willful disregard, failed to comply with its obligations derived from the contracts of insurance, and the laws applicable thereto, as contained in policies issued in the State of Texas.

. . .

Revisor's Note

(1) Subsection (i), V.T.I.C. Article 8.24, refers to the "State Board of Insurance." Chapter 685, Acts of the 73rd Legislature, Regular Session, 1993, abolished that board and

transferred its functions to the commissioner of insurance and the Texas Department of Insurance, as appropriate. Chapter 31 of this code defines "commissioner" and "department" for purposes of this code and the other insurance laws of this state to mean the commissioner of insurance and Texas Department of Insurance, respectively. Accordingly, the revised law substitutes a reference to the commissioner for a reference to the State Board of Insurance.

(2) Subsection (i), V.T.I.C. Article 8.24, states that a Mexican casualty insurance company is entitled to an appeal under V.T.I.C. Article 1.04, revised as Subchapter D, Chapter 36. The revised law omits that statement as unnecessary because Subchapter D, Chapter 36, provides sufficient authority for the right to appeal. The omitted law reads:

> Any carrier aggrieved by an order of the State Board of Insurance hereunder shall be entitled to appeal therefrom pursuant to the provisions of Article 1.04 of this code.

TITLE 7. LIFE INSURANCE AND ANNUITIES

SUBTITLE A. LIFE INSURANCE IN GENERAL

CHAPTER 1101. LIFE INSURANCE

CHAPTER 1102. PAYMENT OF INSURANCE BENEFITS IN CURRENCY

CHAPTER 1103. LIFE INSURANCE POLICY BENEFICIARIES

CHAPTER 1104. LIFE INSURANCE AND ANNUITY CONTRACTS ISSUED TO CERTAIN PERSONS

CHAPTER 1105. STANDARD NONFORFEITURE LAW FOR LIFE INSURANCE

CHAPTER 1106. REINSTATEMENT OF CERTAIN LIFE INSURANCE POLICIES

CHAPTER 1107. STANDARD NONFORFEITURE LAW FOR CERTAIN ANNUITIES

CHAPTER 1108. BENEFITS EXEMPT FROM SEIZURE

CHAPTER 1109. UNCLAIMED LIFE INSURANCE AND ANNUITY CONTRACT PROCEEDS

CHAPTER 1110. INTEREST RATES ON CERTAIN POLICY LOANS

CHAPTER 1111. LIFE AND VIATICAL SETTLEMENTS AND ACCELERATED TERM LIFE INSURANCE BENEFITS

[Chapters 1112-1130 reserved for expansion]

SUBTITLE B. GROUP LIFE INSURANCE

CHAPTER 1131. GROUP LIFE INSURANCE AND WHOLESALE, FRANCHISE, OR EMPLOYEE LIFE INSURANCE

CHAPTER 1132. NOTICE OF RATE INCREASE FOR GROUP LIFE INSURANCE

[Chapters 1133-1150 reserved for expansion]